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IN THE

Supreme Court of the United States

October Term, 1967
No. 154

LUCILLE MILLER,

Petitioner,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of California.

APPENDIX TO BRIEF FOR THE RESPONDENT.

THOMAS C. LYNCH,
Attorney General,
WILLIAM E. JAMES,
Assistant Attorney General,
PHILIP C. GRIFFIN,
Deputy Attorney General,
600 State Building,
Los Angeles, Calif. 90012,
Attorneys for Respondent.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

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"Q On more than one occasion, sir?

A Yes.

Q Do you recall about when she first discussed this relationship?

A Oh, I would say approximately several months prior to Dr. Miller's passing.

Q Let's see. Dr. Miller died on October 8th. May, June?

A My memory is really that I couldn't guess it within three or six months, either. [768]*

Q (By Mr. Turner) All right, fine.

A These were more in the nature of just general discussions about everything and we discussed her re-

*Page numbers in brackets are to the original Transcript.

lationship with Mr. Hayton, as well. On one occasion, was in our home, I think, which was about a month after another, which was when we were at our beach trailer on another occasion. The particular date I couldn't set on either of these. [769]

Q What was said on that occasion by Mrs. Miller concerning her relationship with Mr. Hayton?

A I don't remember. This is all I can remember is what I think I said. I don't recall what she said.

Q Did she tell you that she was having an affair with Mr. Hayton at that time?

A I don't think she used those words.

Q Did she say that, though?

A I don't remember if she did. I can remember at the beach trailer some rather direct advice I gave, which was more in the form of not counseling or discussion, but, rather, rather, oh, rather direct advice.

Q Was that in connection with her relationship to Mr. Hayton?

A Yes.

Q What did you tell her at that time.

A Yes. The discussion at that time, I think, pertained to [770] "just how much—this is the part I can recall, at least, although there were many more aspects to it. Just how much of their friendship together was sincere on his part, and how much was—and my feeling was at that time that the—

THE COURT: Is this what you told her, sir?

A Well, —

THE COURT: You were asked to give the conversation.

A This is what I told her. I can only say my general impressions. My general conversation towards her was that I didn't think that the romance, if such existed,

was sincere on his part. I think that is about how I said it. [771]

A I think that Mrs. Miller made the statement about the fact that it was sincere on her part, although I don't recall that she used the word here stated.

Q What did she say was sincere on her part, sir?

A She gave me the impression that the situation was sincere on her part. That it was not—

Q That is the situation with Mr. Hayton?

A Yes, uh-huh.

Q Did she use the word 'love'?

A I don't know. I presume that feelings were along that line, but I don't know if she used that word. Also, I probably told her, too, that it was my best advice to forget about it.

Yes, I think those were the two statements here that I omitted. [778]

A Many times.

Q Did she in those phone calls ever discuss with you her personal affairs as distinguished from your business affairs with the home?

A Yes, sir.

Q Specifically, in her phone conversations with you, did she ever discuss with you her interest in Attorney Hayton?

A Yes, sir.

Q Now, you say that you completed the home in March and you finally completed all connection with the building and paying for the home in June of '64?

A That's correct.

Q Did Mrs. Miller continue to call you on the telephone concerning her personal interests in Mr. Hayton after that [827] "time?

A. Yes, sir.

Q At that time were you and Mr. Hayton engaged in a business enterprise together?

Q June, 1964, were you and Mr. Hayton engaged in a business enterprise together?

A Yes, we were.

Q Now, between June and October of 1964, did Mrs. Miller ever ask you to intercede with Mr. Hayton for her?

A Yes, she did.

Q Did she do this once or more than once?

A On several occasions.

Q Did Mrs. Miller at anytime ever discuss with you her like [828] "or dislike for her husband Dr. Miller?

A Yes, she did.

Q Do you recall when she first brought up the subject of her feelings toward her husband, approximately?

A It was rather early in the course of building their home.

Q That is in the early part of 1964?

A Would be early in '64, yes.

Q What did she say at that time concerning her like or dislike for her husband?

A She gave me—she said that he was a very principled individual.

Q By that meaning high principles?

A High principles. And that with reference to her financial dealings, that they didn't see eye to eye.

Q My specific question, sir, is did she indicate to you her personal feelings toward her husband?

A Yes. She said something about her dislike.

Q For her husband?

A Yes.

Q All right. Now, as time went on, you have indicated you had many conversations with her. Did she at later times discuss with you her feelings toward her husband?

A Yes, sir, she did.

Q What did she say? [829]

A She said as a result of a question I posed to her that she really didn't care what he thought about it and that—

Q Do you remember the words?

A He had more or less cut himself off from her and if he tried to do anything about it, he'd get his.

Q Now, during this time, the time that you were building the house, did she indicate to you her feelings toward Mr. Hayton?

A Yes, she did.

Q What did she say in that regard?

A. She said that for some time they had been friends; they had lived in the community, and that she admired Mr. Hayton very much, his abilities as a practicing attorney; she injoyed [*sic*] the same social contracts that he enjoyed, and enjoyed that activity, and they were quite close friends.

Q Now, at anytime later and up to an [*sic*] including June of 1964, did she ever indicate to you further her personal feelings about Mr. Hayton, specifically as to whether or not she [830] 'loved him'?

A Yes, she did.

Q What did she say?

A She said that she had lost any affection whatsoever for her husband, and that she did in fact love Mr. Hayton, and if circumstances were such, she would like to marry him.

Q Did she ever tell you whether or not she had had any conversations with Mrs. Hayton about Mrs. Hayton's marriage to Mr. Hayton?

A Yes, she did.

Q What did she say in that regard?

A That Mrs. Hayton was—had come to her on occasions to discuss their marriage; that she had advised Mrs. Hayton and that she had been quite close to them discussing their problems; she cared for the children and interceded in their matrimonial difficulties. [831]

Q Did she ever tell you whether or not she had discussed with Mrs. Hayton the possibilities of Mrs. Hayton getting a divorce?

A Yes, sir; she did.

Q What did she say in that regard?

A She said that she had suggested this and—

Q (By Mr. Turner) Now, did there come a time when Mrs. Miller indicated to you that she was having difficulty getting to talk to Mr. Hayton?

A Yes, sir.

Q And did she ask you to intercede with him for her?

A She did.

Q. What did she say in this regard?

A She recited the difficulties that she had reaching him through the home, through the office. That the girls wouldn't let her through and she thought he was there, and asked me to carry messages to him, which I did.

Q You were aware that at one time she filed for divorce against Dr. Miller?

A I was.

"MR. TURNER: Excuse me just a minute.

At this time, your Honor, I offer in evidence a certified copy of the Complaint for Divorce, [832] 'Lu-

cille Miller versus Gordon Miller, No. 123643,' showing it was filed with the Clerk of the Superior Court July 8th, 1964.

"MR. FOLEY: I have no objection, your Honor, to the fact that it is a certified copy. I have continuing objections as to its relevancy, its materiality, and its competency in this particular proceeding.

"THE COURT: Very well. The objection is overruled. It may be admitted.

"MR. TURNER: What number is that?

"THE CLERK: No. 44.

"THE COURT: Plaintiff's 44.

Q (By Mr. Turner) Now, after this divorce was filed on July 8th, you were aware that eventually she and her husband resumed living together?

A Yes, sir.

Q Did she ever tell you why they resumed living together?

A Yes, sir; she did.

Q What did she say?

A She said that if she couldn't have Mr. Hayden, at least, the man with a $25,000 a year income was better than nothing.

Q Do you recall sometime early in August of 1964, Mrs. Miller telephoned you at your home and discussed a letter she had received from Mr. Hayton?

A Yes, sir. [833]

'Some. Oh, dear. Do you want to hear a letter I got today in the mail?

'Yea'.

'D[illegible] you hear? Did Marilyn tell you?

'No.

'No. Now, dig—a—what do they call it? What's the opening part of the letter, the salutation? Yeah, I

guess it is. "Dear Mrs. Miller." That part is very important. "After careful review of your case, I do not feel that I desire to represent you or your daughter, Debbie Miller, in connection with this accident. I would, therefore, suggest that you discuss this matter with an attorney of your choosing. If you would then have this attorney contact me or my investigator, I'll be glad to supply him with the pertinent information and documents in your file, which would be helpful to him in further legal representation. May I remind you that insofar as your legal rights are concerned, any legal action must be [851] filed within one year from the date of the accident, otherwise, you will be precluded from making any claims for your injuries or damages. Very truly yours, Arthwell C. Hayton." And he didn't even sign it. It's someone else's writing.

'Well, I've heard it all.

'Huh?

'I've heard it all.

'Isn't that something? He really went away with a degree of hate, didn't he?

'He—he's a little—he didn't tell me a word about it, Lucille, not a word.

'He didn't?

'No.

'I wonder how come. Did you get a chance to say anything to him at all on the way in?

'Very, very much on the surface, because there were others present, so, I didn't have much of an opportunity.

'Isn't that—well, I think it's—I think it's really a good thing in a way if he doesn't handle the case, not because he did this in anger. Apparently he thought I was going to do this, and he was going to beat me to the draw, you know, and I think it's just as well he

doesn't handle it, but I just about cracked up when I got that letter—"Dear Mrs. Miller." I really—

'Rather formal, isn't it? [852]

'Yes. I'm really surprised that he would give me the satisfaction that I had gotten to him that much, you know?

'Yeah, well, boy, he's turned down a piece of a fee there, too.

'Yeah, well.

'Unless he was going to do it for you for free. I imagine you'll get a pretty good chunk of money out of that thing.

'Yeah, I don't know; I just don't know. The thing of it is, if he would just talk to me. Did you tell him that Cork and I have gone back together? [853]

'Oh, I don't know what to do with Arthwell, Irwin. You hate to end anything with this much hate, you know?

'Uh-huh.

'And I know if he'd talk to me, we could straighten it out, but if he's just going to hang up the phone on me and refuse to talk to me, there isn't much you can do, you know. I don't know whether if I was with him in person, if I could get anywhere with him or not. I just—I just don't know because he's never been like this in all the years that I've known him. Is this typical? Is this something in him you know?

'No. No, I've never seen him angry or anything. He's always been very pleasant, and that's why he's so well liked, because he has a very pleasing personality.

'Yeah, well, I've never considered him all that [855] Beloud tipped his hat to him, you know, and—but as I say, if he won't even talk, but I just wondered if he'd said anything to you on the way in at all. Well, listen,

when you called me from his office and said you were coming over, what were you coming over for?

'Friday? [856]

'Yeah.

'Oh, he—he'd decided that he wanted to get together and have a little chat with you.

'Oh? He had?

'Yeah. Yeah, but he wanted me to be along, see?

'Oh?

'And this has gone one [*sic*], oh, for about a week, a week and a half.

'He's wanted to have a little chat with me?

'Yeah. Yeah, I don't know whether—what the contents of the chat was going to be about. He hasn't divulged that. He wanted me to come along, and I said, Arthwell, I don't want to get in a hassle, you know?

'Uh-huh.

'And he said, Oh, no; it won't be a hassle, and I just tried to steer clear of the whole thing, and say, look, you—if you've got fences to mend, do it yourself, or whatever, you know?

'Well, see that—well, that's why he wanted to come down to the beach, was it?

'Right. Right.

'So, it wasn't,—

'And, then—

'It wasn't friendly then.

'Then—well, he appeared that way.

'Hm-m-m. [857]

'I really can't figure it. He's very mixed up; he's very confused. So,

'Well, so, Friday, he decided that he would talk to me?

'Yeah. Yeah.

'Oh, what a nut! Well, I wonder when he sent this letter off—what time of the day? Well, this would have to be after that because this was sent from the San Bernardino Office, and you were at the Loma Linda office.

'Right.

'So he sent this off after that, then. Well, did he tell you what was said on the phone the night before?

'No, huh-uh. [858]'

'I think so, too, but I—I don't know. I just thought I'd see if anything—I just don't know what he wants to talk to me about that he'd have to talk in front of you. I just can't figure it. Can you?

'Well, now, that you mention that letter, I was wondering if, you know, he says that he doesn't want to be bothered. I know that the situation down at the boat ~~there might~~ that night [LG] really got him.

'Yeah. [860]

'He doesn't think there's any humor in it at all.

'Uh-huh.

'And whether he has re-thought of that, I don't know, and I—I think that you, you pose to him a threat on his security, his well being, and his reputation, etc., and so, for the time being, I think he wants to run away from it.

'Well, you know what I did to him. You see, I called him, when he was so nasty to me that morning on the phone—for no reason, you know? No reason at all, as I had called you, and then, when I didn't get you, I asked for him, and I was just being silly; I was back with Cork, you know, and he was just—you know—I mean, what's more childish than, "No, I don't love you, and I never did." You know? Nothing sounds

more juvenile, really, and so, he was just nasty, just nasty, nasty for no reason, and I wasn't expecting him at all, and so then, that, you know, you came in then, and I said I'd like to talk to you, when he was so nasty. He said, "I won't be available" So, I called him that night, just on purpose. Of course, I know how mad this makes him, you know, and so, I said I'd like to talk to you tonight, and he said "where?" And you know, the thing of it is, Irwin, he's scared to death to face it, because he's afraid he'll weaken if he sees me. I think that's what it is. [861]

'Well, that's a possibility.

'And he said, "Where?" And then, the minute he said it, you see, he's told me, he said, whenever I talk to you or see you, you get me to do and say things that I don't want to say, so, you see, he feels like I am a threat to his stubbornness, [sic] you know? And so, he said, "Where?" And just as soon, he said, "No, I'm not seeing you." And I said, "You better." Just develish, [*sic*] you know, and so, he hung up on me. So, I dialed him right back—talk about two children. I dialed him right back, and I said, "If you'd like the Minister and everybody else up there to know what Elaine said the night she died, and see a receipt from a motel and a few other things, little boy, you just keep this up." He said, "Don't you threaten me, or you'll wish you'd never heard of Arthwell Hayton." He was just oh, he was simply enraged, because I did threaten him, you know, and he was just absolutely in a rage, and so, I do think that he thinks that I'm a threat to his well being and security and you know, I did—when I went out with him the week after Elaine died—it was about a week later, and you know, I—I was

crazy about him, but I never trusted him—never, and so —I think you know this, don't you?

'What?

'That I never trusted him. [862]

'Oh, I had a feeling; I had that feeling that you didn't.

'And so, I said to him,—you know these tissue paper type receipts, you know, you get?

'Yeah, uh-huh.

'I said—Mary was at the house—and I said, you better throw that out, and so, he did, and when he turned around, I took it, and so, I have that, and then, I'll tell you something else—you'll never tell him this, will you?

No. No.

'One time about March—the end of February or March—I just—oh, I don't know, I just was real suspicious of the whole thing, and I thought,—I noticed Art had two sides to him, and if he ever decided to be a bastard and turn on me and say I never said anything, you know, and try to get out of it, so, I have a friend who runs—a very good—is someone on your line?

'No, huh-uh, I don't know what that was.

'A very good, big photography place, you know, with tapes and everything, and so, he followed me out when I was meeting Arthwell and waited until we were out of the way, and then he put a tape recorder about the size of a peanut box under my seat in the back of the Cadillac.

'Yeah? [863]

'And he placed the mike kind of—oh, I could show you if I had the car, you know.

'You're kidding!

'Oh, I'm not, and I'll tell you the conversation because I went back and played it back to myself the other day, and I'd forgetten some of the things in it, but anyway, I,—so, I didn't get a chance to start the darn thing, so I couldn't stay in the car, so, I had to leave Arthwell and give another running stab at getting the thing turned on. So, as I went to get out of the car, his car to my car, I turned it on so it ran for ten or—ten minutes anyway, with nothing on it, and then, I came back, and I got in the car, and I said to him, I said, Arthwell, I just feel like I'm being used. Of course, I can't have an affair anyway, Irwin. I'm just not the type at all—my particular make up, and I get all involved, and it's not worth it, so I said, I feel terribly insecure, and I feel like I'm being used, and so, he started a conversation by saying he could tell exactly what I was thinking, I was just—he didn't start the conversation; no, the first thing he said was—he started sucking his thumb, and he said, "I love you. I have for a long time. This isn't something that happened yesterday." He said, "I'd love to have you for my wife. I'd marry you tomorrow if I could. I don't love Elaine. He'd love to hear that played back, wouldn't [864] he? And then it went on, and we talked for about forty-five minutes. In fact, we ran the tape right down because it was an hour, and, of course, I couldn't turn it. Then this kid had to follow him all the way back—I forget if it was San Bernardino or Redlands—wait til he went in, and then get this thing out of the car, and so, anyway, I just thought, just in case, you know, he ever pulls this "I never . . ." and the things that he said, you just don't say when you're just going out. You know?

'Yeah, that would be just a little incriminating, wouldn't it?

'Just a little incriminating. It really is. Because you don't tell a woman that you just don't love your wife, and he went on, and he talked. He said that he thought that his—oh, he went on about his affair with Bonnie, and how Elaine,—I'd forgotten a lot of this until I played it back—how Elaine would—he said I'd go in, and he said she'd cry and she'd vomit, and he said I feel I just want to take poison. He said I could just—oh, and I said to him then, I said, oh, Arthwell, you never could! He said, you know I like life too well, but that's just how you feel. [865]

'He said, I've thought and thought and thought about getting a divorce and marrying you, but I just feel at this age in my life, to change all my way of life that I wouldn't be happy, and I would come home and eventually, I wouldn't be happy, and it would get to you and you wouldn't be happy. I think this conversation would be pretty incriminating. And, so, anyway, he threatened me right back, but I know the one ~~man~~ main—[LG] threat that he has on me, that I could just say that he's bitter and making it up, because he can't prove it. He has no proof for the one thing he has on me. None.

'Huh.

'But I've got him coming and going, and the pathetic part of it is, if he would just talk to me and be halfway a human being. . . . I'd apologize for that thing down at the boat, you know? If he'd just go—I think if he knew what I had on him, he might think twice. You know?

'Yeah, he might. But you just floored me the other day when I called, when you said about this gal. I can't believe it. I just can't believe it.

'Well, I don't know. I had no idea; he never mentioned it to me. I thought maybe—

'Something like that just doesn't go away.

'Well, I know. That's why I think the man is acting like such—this is one thing I've attributed to his acting like such a bastard. I'd thought that he had that pressure [866] on him on top of everything else. And Elaine said to this girl—I'd forgot—but you know what Elaine said to this girl? She said, well, she said, you know, she said, I was a virgin when I married Arthwell. In other words, don't give him all the blame, you know?

" 'Uh-huh.

'Huh?

'Yeah, I know what you mean, but you know, if he'd had a —if he'd gotten someone pregnant, they would be around by now, looking for handouts?

'You don't think that they have?

'Oh, I'm sure not.

'You don't think so, huh?'

'Huh-uh.

'Would he tell you?'

'Well, man, I know everything else. He may pick that one thing to—

'But he hadn't told you anything about me till I did, had he?

'No. No, that's right.

'I don't know, Irwin. I have no idea. None. If Elaine had lived, we'd have probably known, because she was meeting her that next Monday, and Elaine even talked to me about adopting the baby. She said if she won't have an abor—and she said to me, "why did she contact me?" And she said—she even talked to me about adopting the baby, [867] so apparently,—I

don't know. Maybe, they were—it's not something Elaine made up. She called me right after she got the phone call that Thursday, but she didn't tell me what it was til that night, because then I called Arthwell—as soon as she called me, I thought, oh, oh, you know—she was upset, and I thought, oh, she knows about us, so, I called Arthwell, and he said, no, he said, I know what's wrong. He said you meet me for a cocktail, so, you know—

'Well, did he discuss that with you then?

'Oh, gosh, no. So, I met him for a cocktail, and he told me all the things that'd gone wrong that week, and how she'd cried after she'd been here and thought that he liked me, and then the things—you were involved in some of the other things that happened that week, you know? When you went to that press conference with him, and you went into L. A. one night, and so on, and so forth. She was upset over all these things, and he told me all these things, and then, when I saw her, she, you know, made me promise I wouldn't tell him this, and then, when she died that morning, I figured, well, if he knows she know [*sic*] this, there'll be no doubt in his mind it was suicide, you know? So, I never told him, and, but I don't know a thing about it. He never mentioned it to me either, Irwin, not a word, and I never—I've never tried to pump him about it.

'Well, the thing that just floors me is that she called [868] you to come all the way from your house, to come over to Loma Linda, just to discuss this. Why didn't she tell you on the phone?

'I don't know. I don't know. With that Bonnie bit, the same thing happened. We didn't talk—well, we talked on the phone, but a good bit of the time, she would end up at my door, or I'd meet her over there,

and we'd have lunch or something, you know? Because she wanted me to come over then when she called me. I think she had Jack there or something. She wanted me to come over, and I couldn't, but I said I can come tonight, you know?

'Uh-huh.

'And then, when she called that Friday, she wanted me to go all the way back over there to get those kids. She didn't offer to bring them up here. Now, Sandy, answered the phone, and she—but I feel if he knew that, there wouldn't be much doubt in his mind as to what happened.

'Yeah. Yeah. Well, I don't know whether that was someone just playing a prank, or whether there was some truth to it.

'Well, I don't either. That's a hell of a prank to pull, because Elaine was innocent, and Elaine did nothing to bring that kind of stuff on her.

'That may be, but there've been quite a few such pranks pulled, and I don't know, I don't know what to think at this point.

'What do you mean "quite a few such pranks pulled?" [869]

'Well, she used to get quite a few calls. That's why they had an unlisted number, you know.

'No, I didn't know this.

'Oh, yeah. Yeah.

'She got only one call that I ever knew of. Did she get more than that?

'Yeah, she got tipped off on this Bonnie-thing. Someone called her and told her on that. How else would she find out?

'Private detectives.

'You think she actually hired one?

'I've always known how she found out about Bonnie, Irwin, but I knew that Arthwell would probably stay with her for about five minutes on top of everything else, if he ever knew. She wasn't phoned about Bonnie.

'Well, that's what he thinks.

'I know, and you just leave him thinking that, all right?

'All right. I have no—no point in bringing up the dead.

'No. I told her at the time, I said he is the kind of man—it's just like with what I did down at the boat—I did that on purpose to save myself from letting my heart do something crazy and getting me in a mess. I think you know that.

'Uh-huh.

'I knew if I did that, I was finished, and it was the only way that I could be sure, I'd have the brains to be finished. [870] I mean, I don't like the idea of ending up his hating me like this, you know, this hate, but I knew that boat deal with a man like him would be the living end, and I can prove it by the fact I never let Elaine—let him know some of the thing [*sic*] that she did. In fact, she was all ready to have a private detective on him again.

'Where did she get the money for it?

'She had access to the check book all the time; all you have to do is overwrite the grocery money and pay cash, dear. That's no big problem. Only a hundred dollars.

'Oh. Oh.

'That's all it was. In fact, it was under. It was eighty something.

'That's pretty cheap.

'Well, it might have been because who she was, because he knew who she was, I think, the detective that did it, or of her, and so, she wanted to—you know, she wanted to go out herself and chase him down, just like I did, and just make a big scene, and I wouldn't let her. I just had a fit. I said, you want to make a fool of yourself and humiliate yourself in front of the woman, if there is one, you know? I said you can't do that. I just wonder if she didn't tell Arthwell she got calls when she didn't because I only know of one phone call she ever got, and she called me as soon as she got it.

'Well, it's something that we'll probably never know. [871]

'Well, that's very true. We probably won't, but boy, I could get that little boy coming and going, and he hasn't got one thing on me that he can prove. I mean, I've got concrete—he has nothing concrete. He has something that he knows he just couldn't prove in any way, shape or form now. I just don't know why an attorney wouldn't have the brains to play it smart.

'Well, I think that everybody is vulnerable at one time or another, and—I've been reading some political paper back here, and it shows how people do such stupid things. It's not good sense, and it's hard to explain—

'Yeah, well, I think that with him, that he's just turned to absolute hate, where I'm concerned, you know.

'Well, I wouldn't say that myself. I would say that you, at this point, proved to be an embarrassment to him, in a different connotation of the word, more an irritation than an embarrassment, and it reminds him of things he's trying to put out of his mind. It's affecting his legal judgment, and so, I think what he's doing is trying to separate himself at this point.

'Yeah.

'And I think that, as when Bonnie left the office, eventually, the whole staff turned over, I think that he'll probably go through this complete change with everybody.

'You do?

'Oh, yes. Yeah. Yeah. This is normal. This is what [872] people do.

" 'You mean because of Elaine?

'The whole situation.

'Hm-m. It's too bad if he ever gives up Eleanor, don't you think?

'Yes. Yes, I do. Well, that would probably be the last.

'Uh-huh.

'But I think there'll be a whole new change in friends and everything, and so, I think that probably you—you're one of the first, you see?

'Yeah. Well, it might be the best thing for him. I don't know. Bob Peach won't like it if he gets changed over.

'No. No.

'Do you think he will?

'Well, I have never yet seen a law firm with an investigator makes the grade that he stays there, and I've known several investigators that'sve [*sic*] become attorneys.

'Do you think that Arthwell will turn on you eventually, too, Irwin?

'Oh, I wouldn't put it that way. I'd just say that we'll probably reach a point where we don't compliment each other, and decide to go our separate ways.

'Well, Marilyn says he's not—he's making quite a point of ignoring her.

'Oh, I think—I think that's being too sensitive. Right now, she's particularly sensitive. [873]

" 'Hm-m. Is she there?

'Not in the room. No. So, but I think that this is probably one reason why he'd like Terry to go away, too. You know?

'Uh-huh.

'He's trying to make a clean break and a clean start, and I think this is what he wanted to tell you, and but needed a little moral support.

'Yeah, you said that, in so many words before.

'Huh?

'You said that in so many words before, you know—that he didn't have the—the courage, I mean, let's fact [*sic*] it. Sure, I could probably tell a lot of people a lot of things, too, but when it comes right down to it, may [*sic*] I wouldn't, you know?

'Yeah, well—

'Especially if you've been intimate with a person, it makes it that much more difficult. She says, oh, you remember the way we used to—Ah-hah, yeah, sure I do, so that's the situation.

'Well, his emotional entanglement with me is over, as of when I went back to Cork. In fact, it was over, as of the night of the boat, you know? And—

'Is Cork living at home, now?

'Yeah.

'Oh. [874]

" 'Yeah.

'Is he home tonight?

'He took the children dow [*sic*] to church. [LG]

'And you didn't go?

'No.

'You're naughty.

'I didn't, but he took them down, but I don't know. I don't know whether to let him—the thing of it is, if you end up friends with someone—we never saw each other that often anyway, we probably once every two or three months, we'd have lunch together, you know, and all the seeing was always on his part. 90% of the time, I'll say it that way, he was the one that called. In fact, the last time they were here, he invited himself, you know?

'Well, you know, you could probably ingratiate yourself with your husband for the rest of your life, if you would say, oh, that b-a-s-t, you know?

'Oh, I showed Cork this letter he sent me.

'And what did Cork say?

'He said I'm glad to see it end on hate. I hope it stays that way.

'See? What'd I tell you?

'Yeah.

'He couldn't ask for anything better.

'Well, Cork says that if he weren't a Christian, he would kill Arthwell, because he said for years—and, of course, [875] he has a great many people over here who feel—are with him, and he said for years he worked himself into my home, and Arthwell did make the advances, Irwin. I'm not just saying that. And he played every card all the way, and Cork said, I saw him doing this, and I say you succumbing to him, and I knew that he was right from the first, and he said if I weren't a Christian and didn't he say I would kill him, and he said I don't think I'd even get sent to jail for it.

'Well, I think he would, but I don't think he's the kind that could do it anyway.

'No. Oh, he would go over there, I think, and mangle Arthwell, if I'd let him. There was a point when he'd have gone over there. He could have done

it, because he's just like Guy. They're wirey, [sic] you know, as all heck, and there was a time when he would have gone over there, I think. This isn't his nature, but there was a time when he would have gone over there and just completely mangled Arthwell, and, of course, he's done Arthwell a lot of harm because there's some pretty important poeple over there that Cork know quite well, and like ....., he knows the whole story from Cork, you know. Cork told him, and so, I mean Cork don't ever pass up an opportunity to cut Arthwell's throat, naturally, you know, and you can't blame him. You wouldn't either.

'No. That's a—it's a problem. [876]

'But I've spent an awful lot of time keeping Cork under control and did a beautiful job on it, but I'm not going to work too hard at it any more.

'Well, remember, now, just keep the bread on the waters, and don't rock the ship until we get our little project completed here.

'Irwin, I would never ~~to~~ do [LG] anything to cross you up. I only—

'No, but the general peace of mind right now, boy, until—until the first of the year, is real important, because that's maturity date of our—

'And, then, you would be all right, huh?

'Yeah. Yeah.

'Well, if he'll talk to me when he gets back, I would talk to him once, and then leave him alone. I mean, I'm back with Cork. I can't see him, you know?

'Uh-huh.

'And, I—

'Well, I think if he has a change [sic] to get away and get out of the pressures of people—other people calling him and advising him and

'Do they do this?

'So he could think for himself.

'Do people call him and advise him?

'Oh, yes. Oh, certainly.

'They do? [877]

'You know that.

'No, I didn't, Irwin.

'They have ever since the tragedy happened.

'You're kidding.

'Oh, no. No.

'I really didn't know that. Advise him about what?

'Everything, and you see, he thinks, too, that you are doing this in a way, you see, whether you mean to or not, and it just becomes another one of many irritations. He gets up in the morning, and he gets a phone call from this one and that one, trying to organize his life, and this, he resents, and even more deeply than he ever did. I've called him, I think three times, at night, and he's been very curt with me. And I can understand why, so I refrain from it. So, this is what the telephone call bit really bugs him. So, I suggest it to him, I said, look, take your phone out of the house. You don't need it there. The kids don't need it. Elaine's not at home.

'Well, why doesn't he change his unlisted number?

'Well, then, he says, well, all the folks at the church have it, and they need to get hold of me for that. So, he didn't want to do it.

'Hm-m. Well, I think he should keep his phone, but change his unlisted number, and just let the pastor have it, you know?

'Yeah, well, that doesn't work out too good either. [878] Somebody always get is, [*sic*] but anyhow, I think that given a couple of weeks, he'll be all right.

" 'Well.

'Well, I got to—

'I know if I could talk to him, I could soothe him over. I know that.

'Yeah. Yeah. I got to knock it off and go get my daughters. It's about time to play transporting.

'That's why Cork just stayed down the hill with outs last night—" [879]

Q When was it that Lucille told you that she resumed her marriage with Cork because if she couldn't have Mr. Hayton, that a man with $25,000 a year income was better than nothing? When did she tell you that?

A Seated in my car in Newport Beach. [909]

Q Mrs. Sprengel, directing your attention to the latter part of August, 1964, did you have a conversation with Mrs. Miller in which she discussed with you her relationship with Arthwell Hayton?

A Yes, I did. [924]

Q Do you remember where that conversation took place?

A On the telephone.

Q What was said?

A The one thing that I can remember is that Mrs. Miller told me in that conversation that she was holding a trump card.

Q Against whom?

A Mr. Hayton.

Q All right. Now, calling your attention to the latter part of September, did Mrs. Miller have another conversation with you in which the subject of Mr. Hayton came up?

A Yes, she did.

Q Was that first over the telephone?

A Yes, that's true.

Q What was said over the telephone?

A She called on the telephone to ask me if I would be home that afternoon. She told me she had a letter that she would like to show me if I would be home. [925]

Q Now, Mrs. Sprengel, just before the morning recess you had indicated that sometime late in September you had received a phone call from Mrs. Miller asking if you would be home that afternoon. Do you know what date that was?

A September 22nd.

Q And that afternoon then did Mrs. Miller come over to your house? [930]

A Yes.

Q Now, when she came over to your house that afternoon, did she come alone?

A Yes, she did.

Q And did she show you something?

A She showed me a letter.

Q In connection with the letter, did she make any statement to you as to what she would have done with the letter under certain circumstances?

A Under certain circumstances, she would have copies of the letter made to give to various individuals.

Q Did she indicate that she, under certain circumstances, she might have destroyed the letter?

A She did.

Q And what circumstances were those?

A If she had married Mr. Hayton.

Q In that conversation on September 22nd, did she indicate [931] her present feelings, her feelings at that time towards Mr. Hayton?

A Yes, she did.

Q What did she say in that regard?

A She told me that in spite of the things that had recently taken place, that she still loved him; that this was not the sort of thing that you could just turn off. [932]

Q You used to talk about Arthwell as well as listen to Lucille talk about him, didn't you?

A This is ture.

Q Now, in September, she, Lucille told you that in spite of all these things, that she still loved Arthwell, didn't she?

A Yes.

Q And she said that this was not the sort of thing that you [934] can turn off, is that right?

A That's correct.

Q But didn't she also say, though, that she would never marry him because he was no good?

A I believe that's true.

Q And didn't she also tell you that she would rather be married to someone who loved her than to someone like Arthwell?

A That I don't recall hearing.

Q Now, in that September meeting did she tell you that her husband had attempted suicide?

A Are you speaking of the same date?

Q I'm asking in that same conversation did she tell you that her husband had attempted suicide?

A Not in that same conversation.

Q But a week or two earlier she did?

A This is true.

Q And she also told you that her husband was taking barbituates [sic]?

A That's right.

Q Did you know Dr. Miller?

A I never met him.

Q Would you say that Lucille used to confide in you?

A Perhaps to some extent, yes.

Q You and Lucille got along very well, didn't you?

A We did. [935]

Q What did she say to you about her husband attempting suicide? Did she say 'attempted' or 'threatened'?

A I believe threatened.

Q Did she ever tell you that he had actually tried to commit suicide?

A No.

Q What did she say regarding his threats of suicide?

A She told me that he had been rather specific as to how this would take place.

Q How did she say that he was going to do it?

A That he had told her that he would drive his car to the mountains and drive it off the cliff.

Q That was sometime about the middle of September she told you that?

A That's correct. [936]

A Yes, she did.

Q That conversation, counsel just asked you if it was in the middle of September. Was it around September 6th that that took place?

A I have the date of September 15th.

Q 15th. Thank you.

A Uh-huh. [937]

Q Mr. Nourse, what is your occupation, sir?

A I'm a certified public accountant.

Q Where is your office?

Q At 445 North Gary Avenue, Pomona, California.

Q What is you phone number there?

A NA 31591.

A Among your clients this last year, did you have Dr. and Mrs. Gordon Eugene Miller?

A Yes, sir.

Q And did you handle the bookeeping for his dentist practice?

A Yes, sir.

Q When did you—when did he first employ you in that regard?

A Approximately the middle of November, 1961. [938]

Q And you were employed specifically to try to straighten out his financial affairs?

A That's correct.

Q Then you were taking care of his accounting during the years 1962, 1963 and 1964, to the date of his death, is that right?

A Yes, sir.

Q Now, going up to the year 1963, do you know what his net income before taxes was?

A May I refer to papers, sir?

Q Yes. Would you? Incidentally, you prepared a summary of his financial statement and income and expenses for the year 1963 and '64 to the date of his death and furnished [939] his wife's attorney with it, didn't you?

A I was directed to do so by letter, yes, sir.

Q Okay.

A I have a copy also for submission at this time.

Q All right. Go ahead.

A I'm sorry. I've forgotten the question, Mr. Turner.

Q The question was that was Dr. Miller's net income before taxes for the year 1963?

A $27,430.86.

Q Twenty-seven thousand what?

A Four hundred thirty dollars and eighty-six cents.

Q In other words, that's what he made out of his dental practice after he had paid all of the expenses of the dental practice, is that correct?

A That's correct.

Q What was the gross before the expenses came out?

A $53,759.21.

Q The difference then between twenty-seven some thousand and fifty-three some thousand was his expenses in connection with his dental office?

A That's correct.

Q In 1964, now, he died on October the 8th. Up to the date of his death, what was his net?

A His net income in that time before calculation for depreciation was $15,299.76.

Q And what was his gross for that period? [940]

Q Mr. Nourse, I have just a few more questions to ask you. Did you ever have a conference with Dr. and Mrs. Miller at which the amount to be set aside each month for life insurance premiums was discussed?

A Yes, sir.

Q Do you recall when that conference took place?

A On the 13th of February, 1963.

Q And at that time, did you tell Dr. and Mrs. Miller how much would have to be set aside each month in order to take care of the life insurance premiums as they came due?

A That and other contractual obligations.

Q How much did you tell them would be necessary for life insurance premiums?

A It appeared that the amount of life insurance premiums pro rated over an entire year would amount to approximately $150 per month. [952]

Q Now, sometime after the death of Mrs. Hayton along about the end of May, did you receive a phone call from Mrs. Miller asking your help in connection with Mr. Hayton?

A Yes, I did.

Q That was received at the San Bernardino law office?

A Yes, it was.

Q What was said in that phone conversation, Mrs. Brookins?

A In substance, Mrs. Miller said that she was aware that certain friends of Mr. Hayton in Loma Linda and Redlands had been talking to him against her, and that she knew I didn't have any control over what went on in the Loma Linda office, but she wanted me to do everything I could to keep [971] these people from talking to him in the San Bernardino office, and in substance—well, she said that she was desirous of marrying Mr. Hayton, and I told her that—I replied then that—I'll get my thoughts in a moment. I just can't think right offhand.

Q Would you like me to go on to something else?

A Yes, and come back to that. Let me get my thoughts.

Q Did she say anything specifically about who she wanted to be stopped from talking to Mr. Hayton?

A No, she did not expect that there was a minister apparently that had been talking to him. But I told her after she said that she was interested in marrying

Mr. Hayton, that I didn't think she had a chance. In substance this is what I said. This isn't verbatim, of course. In substance I didn't think she had a chance. First of all I didn't think he cared that much for her, and, secondly, he was too bereaved over the death of his wife at that time. She said, 'Time will tell,' and in the meantime she told me not to get any ideas about Mr. Hayton.

Q I see. Back before the death of Mrs. Hayton, did Mrs. Miller ever discuss with you her thoughts about Mrs. Hayton as a wife for Mr. Hayton?

A Yes, on one occasion.

Q What did she say?

A In substance she said she felt that they were not suited for each other personally; that she though perhaps she [972] was more suited for him than Mrs. Hayton was. And I replied in substance that everytime I had observed the two of them, Mr. and Mrs. Hayton, in the office, they appeared to be a happy and loving couple, and that he always talked very highly of Mrs. Hayton. [973]

Q Did there come a time when you stopped allowing calls from Mrs. Miller through to Mr. Hayton?

A Yes.

Q When was that?

A Around the middle of June, 1964.

Q Why did you stop letting the calls through to Mr. Hayton from Mrs. Miller?

A Mr. Hayton had instructed me that he did not want to talk to Mrs. Miller or see Mrs. Miller.

Q (By Mr. Turner) And now, after that occurred, that was around the middle of June, did you continue to receive phone calls for Mr. Hayton from Mrs. Miller?

A Numerous phone calls.

Q Did you ever tell Mrs. Miller that you had been instructed not to put her calls through?

A No, I did not.

Q Did you let the calls through?

A No, I did not.

Q After that, did she change the manner of her phone calls in an effort to get through to Mr. Hayton?

A After she realized that I had been instructed not to put the phone calls through to him, she started calling person-to-person. [974]

Q Did you let those phone-calls through?

A No, I did not.

Q Were the other girls in the office also instructed not to let such calls through?

A They were just instructed never to put a phone call through to Mr. Hayton unless it was announced first. That means long distance person-to-person calls also.

Q Mrs. Brookins, I show you a letter which has been marked Defendant's 8. Do you recognize that letter?

A Yes, I do.

Q Did you type that letter?

A Yes, sir; I did.

Q Who signed it?

A I signed it.

Q Who instructed you to write the letter?

A Mr. Hayton.

Q This is dated July 30th. Did you mail it the same day?

A The same day.

Q The purpose of this letter was to sever Mr. Hayton's client-attorney relationship with regard to her accident?

A That is right.

Q During the month of August, did Mr. Hayton go away?

A Yes, he did.

Q When did he leave?

A The day that letter was written, July 30th.

Q Was he gone from the office—well, for how long was he [975] gone from the office?

A He did not return to the office until September, the first week in September.

Q Was he back home before that?

A Yes, sir; he was.

"MR. TURNER: I have no further questions. [976]

Q Now, you testified that on one occasion, Mrs. Miller told you, 'Now, don't you get any ideas.' Do you recall testifying to that?

A Yes, sir.

Q And isn't it a fact that when she said that to you, Mrs. Brookins, she said that in a joking manner?

A Yes, sir; she did. [979].

Q You were aware last spring and summer that Mrs. Miller was interested in Mr. Hayton?

A Yes.

Q. Were you present when she tried to telephone him after he had stopped seeing her?

A Yes.

Q Did he hang up on her?

A I don't know whether he hung up on her or not.

Q On one such occasion when she had been talking to him on the telephone, did you dial him right back and suggest that he had better talk to her?

A Yes. I'm not sure I dialed him right back or talked to him—you know, I just remember talking to him, not particularly how.

Q There has been some reference, Miss Slagel, to the boat incident. You were in court yesterday when the tape recording was played?

A Yes.

Q And you heard the reference in that tape recording of the boat incident?

A Yes. [984]

Q And do you know what we mean by that?

A Yes.

Q Would you tell briefly what happened?

A At the boat?

Q Were you present at the boat incident, Miss Slagel?

A Yes.

Q Was Mrs. Miller present at the boat incident?

A Yes.

Q Did you and Mrs. Miller follow Mr. Hayton to the beach?

A Yes.

Q Where were you when you started following him?

A At a square dancing place. I don't know where.

Q And Mr. Hayton was there?

A Yes.

Q He had a date with him?

A Yes. [985]

Q When Mr. Hayton and his date left the square dance, you and Mrs. Miller followed him?

A Yes.

Q Now, who drove, you or Mrs. Miller?

A I did.

Q And you followed Mr. Hayton to where?

A Driving around Redlands first and then to the bay at Lido, near Newport.

Q Is that where Mr. Hayton kept his boat?

A Yes.

Q Did either you or Mrs. Miller untie the boat?

A I did not. Another lady was there.

Q Who was that?

A I don't know her name. She was an elderly ex-vaudeville [986] type walking her dog, and she suggested that they untie the front of the boat so it would bob up and down. She and Lucille did this.

Q When did you meet this elderly vaudeville type walking the dog?

A We were out on the beach and she came walking along and started talking to us.

Q Was this by the boat?

A Oh, 100 feet from it, approximately.

Q Did she just up and suggest that you untie the front of the boat?

A We were talking and she was rather a character, like I established, and she thought it would be funny.

Q I take it then that it was Mrs. Miller and this mysterious elderly lady that untied the boat?

A Yes. [987]

Q You say you had never seen this woman before?

A No. She alternated between Palm Springs and the beach. She said she lived both places.

Q Did you ever see her since?

A No. We just met her there.

Q Did you introduce yourself to her, get her name?

A No, we didn't that I recall. [988]

A Wenche, yes.

"THE COURT: Lat name is B-e-r-g?

"THE WITNESS: Yes.

Q You are from Norway, aren't you, Miss Berg?

A Yes, I am.

Q When did you come to this country?

A I came here May 23rd, 1964.

Q Now, are you employed at the present time?

A I don't understand.

Q Where do you work?

A I work at Lawyer Hayton's.

Q And what do you do for Mr. Hayton?

A I take care of his children and his house.

Q And his house.

A Yes.

Q When did you start working for Mr. Hayton?

A June 7th.

Q Now, from the time that you started working for Mr. Hayton on June 7th taking care of his children and his house, among other things that you did, did you answer the phone when it rang?

A Yes.

Q Did you receive a call daily or almost daily from a woman?

A Yes. [997]

Q When you first started to work and you first began to receive calls from this woman, did you know who she was?

A No, I didn't know her, but I know it was the same voice every day.

Q I see. Now, later on did you come to know who that woman was?

A Yes.

Q Who was it?

A It was Mrs. Miller.

Q Now, when you first started to work for Mr. Hayton on June 7th, what was his home telephone number?

A It was 7945435.

Q When did you actually first see Mrs. Miller?

A It was the last days of June.

Q Where did you see her at that time?

A At Mr. Hayton's home.

Q Where was she at the home when you first saw her?

A She came up the driveway and I met her at the back door.

Q And then what happened?

A She came and she told me that she was going to take the youngest boy to the mountains.

Q What is his name?

A Jeffery.

Q And had you been advised of this ahead of time by anyone?

A No, I didn't know about it at all.

Q Okay. Then what happened? [998]

A And the girl Terry, she—I asked her what this was about and she—

Q Did Mrs. Miller take Jeffery with her?

A Yes, she did.

Q Did she tell you where she was taking Jeffery?

A She told me she was going to take him to the mountains.

Q Did she say were in the mountains?

A No.

Q Was Mr. Hayton home when that happened?

A No. He was at the office.

Q Did he come home that evening?

A Yes.

Q And did you at that time tell him about it?

A Yes. He asked where Jeffery was and then I told him, and he didn't know about it.

Q Okay. Now, when did you see Jeffery again?

A It was about a week later on.

Q After that did you receive orders not to let Mrs. Miller talk to the children?

A Yes.

Q Did Mrs. Miller continue to telephone after that?

A Yes, she did.

Q Was she told that she couldn't talk to the children? [999]

A Yes.

Q And did she continue to call after that?

A Yes, she did.

Q Were you always able to recognize her voice?

A Yes, I did recognize her.

Q Now, Mr. Hayton went away for a couple of weeks, didn't he?

A Yes, he did.

Q When was that?

A It was last days of July.

Q And, by the way, was the phone number at the home changed?

A We changed it a few days later on after he left.

Q And what was the new number?

A 793—

Q It's all right if you don't remember. When was it changed, now?

A It was the first days of August.

Q After the phone number was changed, did you get any more calls from Mrs. Miller?

A Not when he was away.

Q Did you get any calls from her after he came back?

A Yes, I did.

Q When was that? Do you recall?

A I don't know exactly the day, but when he came back home, I think it was in the middle of August or the late days of August. [1000]

Q Miss Berg, you started to work for Mr. Hayton on June 7th, 1964?

A Yes.

Q And in the month of June did Mrs. Miller call Mr. Hayton?

A Yes, she did.

Q And when was it Mr. Hayton first told you not to let her talk to the children or to Mr. Hayton? [1002]

"(Whereupon, the following proceedings were taken and had in Chambers, outside the presence of the Jury)

"THE COURT: First of all, let the record show that the defendant and her Counsel, and also the District Attorney's Counsel, Mr. Turner and Mr. Krug are in Chambers.

"What is the name of the witness who has just been called?

"MR. TURNER: Peggy Fisk.

"MR. FOLEY: This is the person whom I have previously referred to as Jackie Doe.

"There is a Sheriff's Office report made about this witness under the name of Jackie Doe. When we were in Chambers earlier in this case, I was demanding the names and addresses of witnesses, and Mr. Turner informed the Court and me that Jackie Doe was an undercover agent. At that time, she was working up north in Fresno somewhere. I said I wanted her address for an opportunity to talk to her before she testifies. He assured me that I would have. That she would be available at least two days before she did testify.

"I asked Mr. Turner just two days ago if she was down here. He says 'No.' I still haven't been given her address.

"Now, that is Number one. Number two: [1008] "I am going to represent to the Court also that any testimony of this witness concerning any statement made by my client would be in violation of the rule in the Dorado case. She was an undercover agent, and never informed my client of her capacity. Never advised my client of my client's right to remain silent.

"I previously had served on the District Attorney and the Sheriff of this County a demand to be present at any interrogation of my client by any agent of the Sheriff's Office. So, any testimony of this witness concerning any statement made by my client not only violates the rule in the Dorado case, but the rule in People versus Sharer as well, and also the rule in Messiah versus the United States.

"MR. TURNER: And now, I will state this: In the first place, this woman is an undercover agent working in narcotics. We used her here just previous to the incident about which she would testify. In fact, she is here today to testify in a narcotics case in another

department which is going on today. That she was in the employ of the Sheriff's Office as an undercover agent.

"And now, so far as furnishing an address, she will testify in there today that she has no address. The first time I have been able to see her since away back at the beginning was this morning. She did work in [1009] Fresno undercover. She has been between jobs. And now, she is trying to—she is negotiating with another County for similar work, and she tells me she has no address. We have contacted her when we had to get her down here for today. I intended to put her on, incidentally, a couple of days ago, but couldn't get her in before today.

"We had contacted her through the Police agency where she was working. I did furnish Counsel with the report away back in December, of her report to the Sheriff's Office. She just hasn't been available for any of us until this morning.

"Now, so far as the second part of it is concerned, and, incidentally, on that first part, I am frank to say that I had completely forgotten about anything about Mr. Foley wanting to talk to her ahead of time, and I recall now that he did.

"I have no objection at all to his coming into Chambers and talking to her ahead of time if he wants to although I don't think there is any law saying that the prosecution has to make the witness available to Counsel. I did tell Counsel away back that her name was Peggy Fisk and she was an undercover agent and told him she was working up north, and I told him where, which is all the information I had.

"Now, so far as the rest of it, the [1010] right under the Dorado case and Messiah case and the rest of

them, the right of a witness, a defendant to remain silent. It is a defendant's right, not an attorney's. The defendant may waive this right, providing the defendant does so intelligently, knowingly and understandingly. This is the gist of all of those cases.

"Now, this particular witness did not interrogate his client. She specifically told her, the testimony will be that she specifically advised Mrs. Miller not to talk. Her testimony will be that Mrs. Miller told her that her attorneys had advised her that there probably would be somebody in jail trying to pump her and Miss Fisk, as a part of her technique, I suppose, told Mrs. Miller: 'Well, you shouldn't talk to anybody except your attorneys and the Sheriff,' and, of course, she never did talk to the Sheriff, so that is beside the point.

"She stayed up in the jail with her for about a week and listened and when Mrs. Miller would talk to her, on two or three occasions, she told her 'Don't tell me about it,' but Mrs. Miller insisted on telling her. It is Mrs. Miller's right and privilege to talk, if she wants to.

"Nobody pumped her. Nobody interrogated her. No attempt was made to force her to talk at all. [1011] She did talk, and some statements which she made which are material to this case, we will desire to have her testify about them, and statements in the report which Mr. Foley saw last December.

"MR. FOLEY: All right. The Appellate and Supreme Court has said that a defense attorney not only has the right, but he has the duty to interrogate witnesses. That the prosecution cannot conceal the whereabouts of a witness.

"And now, this witness is not an ordinary witness. She is an agent of a law enforcement agency. We know that she had been in contact with Mr. Turner at

the beginning of this trial because she called him from up north wanting to know when she should come down, and I have a right to question her, not in five minutes, but a reasonable time in which to question her in order to properly cross-examine her.

"Now, as we go into this next part of it, the Dorado case and the Sharer case and those, I have got the citations out in my briefcase. I will bring them in, where I had the cases digested, but that is one of our rights as an attorney to demand to be present under the rule of the Sharer case, and this woman did not advise my client that she was a law enforcement agent. It was by trickery and device that she tried to obtain statements from my client. [1012]

"MR. TURNER: There is no law against listening, your Honor.

"MR. FOLEY: It is not a case of listening. It is a case of asking questions to—

"MR. TURNER: I am told by her that all she did was listen. She specifically advised the girl not to talk to anybody except her attorneys and the Sheriff.

"I can do this. I can withdraw her from the stand until tomorrow morning.

"THE COURT: Well, I think in view of the circumstances related that Mr. Foley was promised an opportunity to talk to this witness, I think you should withdraw her.

"MR. TURNER: Okay. I will withdraw her.

"THE COURT: Now, on the Dorado objection.

"MR. TURNER: You would have to wait and listen to the voir dire on the stand and see.

"MR. FOLEY: Let me tell you about People versus Sharer. This is a Supreme Court of the State of Cali-

fornia case which came out about the time of the Dorado case in which a defendant was—

"THE COURT: Is this the one that was up recently again.

"MR. FOLEY: No, Sharer has not been up again.

"The defendant was called in as a witness [1013] in a Grand Jury proceeding and refused to answer questions on the grounds that it may incriminate him before he went into that Grand Jury proceeding, also his attorney served upon the District Attorney and upon the Sheriff, I believe, a notice that he was not permitting his client to testify. So, his client was in there anyway and asked questions and refused to answer on the grounds that it may incriminate him, so it comes time for trial; the defendant gets up and denies the charges against him, and his testimony is such that he testifies as to his complete innocence. So what do they do? They throw back into his face the statements he made before the Grand Jury, to wit: I refuse to answer on the grounds it may incriminate me.

"MR. TURNER: That is clearly wrong.

"MR. FOLEY: Wait a minute. I am telling you that that is exactly it.

"MR. TURNER: That would be clearly wrong, and I see no relation—

"MR. FOLEY: Here is what the Court said, among other things, that since the defendant's attorney had made his demand known upon the District Attorney, they had no right to bring him into that Grand Jury for questioning.

"THE COURT: What is the citation?

"MR. FOLEY: Let me get it for you, your [1014] Honor.

"(Whereupon, Mr. Foley goes into the courtroom to procure a certain document)

"MR. TURNER: Again, we didn't bring this person in before the Grand Jury. Somebody just listened. If she wanted to talk, that is her privilege.

"MR. FOLEY: 61 Advanced Cal. Ap. [sic.]

"THE COURT: 61?

"MR. FOLEY: Right. Advanced Cal. Ap. [sic] 967.

"THE COURT: Sharer is spelled how?

"MR. FOLEY: S-h-a-r-e-r.

"THE COURT: All right. Well, I think you should withdraw this witness.

"MR. TURNER: Fine. I will put her on tomorrow morning.

"THE COURT: In the meantime, you will have the opportunity to talk to her but on the other objection, we would have to have her sworn and at least testify to the preliminary questions anyway, and have an objection made at the proper time.

"MR. FOLEY: You know that isn't right, your Honor.

"THE COURT: Unless you want me to look at this report and see what she knows. Does this report indicate?

"MR. TURNER: There has to be a foundation [1015] laid, an objection made. There is no way to—

"THE COURT: I think there would have to be. I don't see how that could be done in the absence of the Jury.

"(Whereupon, proceedings resumed in open court in the presence of the Jury)

"THE COURT: I understand you desire to withdraw this witness?

"MR. TURNER: For the time being, I request permission to withdraw Miss Fisk.

"THE COURT: You may step down.

"MR. TURNER: Thank you, Miss Fisk. [1016]

Q Would you like to wear the microphone, or can you keep your voice up?

A Yes, I can keep it up, sir.

"THE COURT: Maybe, you had better wear it.

"(The witness placing microphone around neck)

Q (By Mr. Turner) Now, you have previously testified that you are a sergeant in the Sheriff's Homicide Division, is that right?

A Yes, sir.

Q Sergeant Paterson, I believe you were present at the time that Mrs. Miller was arrested?

A Yes, sir; I was.

Q On the charge for which she is now on trial?

A Yes, sir.

Q The arrest occurred at her home, did it?

A Yes, sir.

Q On what date?

A The 8th of October.

Q About what time of day?

A I believe it was approximately 1:30. In that area, sir.

Q In the afternoon?

A Yes, sir.

Q At the time of her arrest, did you or did someone in your presence advise her of her rights?

A I advised her of her rights. [1017]

Q And what did you tell her in that regard?

A I advised her that she did not have to talk with us if she did not want to. That she could remain silent. I also advised her of her right to consult with an attorney before she talked to us.

Q Now, she was brought here to the County Jail?

A Yes, sir.

Q And she was booked into the County Jail?

A Yes, sir.

Q And during the booking process, did one of her attorneys appear?

A Yes, sir; Mr. Ward.

Q And was he permitted to talk to her?

A Yes, sir.

Q For how long, do you recall?

A Offhand, I don't recall; no, sir.

Q Was it a minute or hours, or what?

A I believe, as I recall, I left and he was still there, and that would be a matter of I'd say approximately ten minutes before I left, and he was still there.

Q I see. And now, Mr. Paterson, during the booking process, or in connection with the booking process, did you examine Mrs. Miller's purse and wallet and inventory the contents thereof?

A Some of the contents; yes, sir.

Q Did you bring with you to court some of the items that [1018] were in her purse?

A Yes, sir.

Q May I have them?

A (Complying)

Q I will return some of the items to you. I have kept out three of them, however.

I show you a business card, Arthwell C. Hayton. Was that in her purse at the time of her arrest?

A Yes, sir.

Q And I show you two what looks like place cards with some Christmas decorations on them. One says,

Arthwell and the other says, Lucille. Were those in her purse at the time of her arrest?

A Yes, sir.

Q I notice inside there appears to be a date and initial, is that your initial?

A Yes, sir.

Q And that is the date that you obtained these documents, sir?

A Yes, sir. [1019]

he said, you know, Cork could have been dead before that fire burned, and I said, 'Well, they can tell, the time of death,' and he said I don't think they can (unintelligible) and I said well, how would I have done it, and he said well, they were looking for, you know - a blow on the head or a bullet, and I said, 'well Harold, as I said, that autopsy will be completely in my favor,' and—

"'P. Did - did you discuss - you and Harold, I gather are good friends?

"'M: Uh-huh.

"'P: He's an attorney, also.

"'M: Uh-huh.

"'P: But

"'M: We're more friends than - you see, Arthwell's always been my attorney.

"'P: Uh-huh. Arthwell Hayton?

"'M: Uh-huh.

"'P: Now, did you discuss - was this brought up with Harold - the fact about Arthwell Hayton?

"'M: Huh-huh.

"'P: Did he - did you mention this to him?

"'M: You mean about - he knows about this.

"'P: Oh, I see what you mean.

"'M: My husband was his closest friend.

"'P: I see, but what I'm driving at is this: Was - [1058] well, let me go - now, you correct me if I'm wrong.

"'M: Yeah.

"'Again. You've known Arthwell Hayton oh, for eight years, I think you said. Is that right?

"'M: Uh-huh.

"'P: And you have been - prior to August. August you broke off with Arthwell Hayton, Art. Is that right?

"'M: Uh-huh.

"'P: And prior to August, you went with him for approximately six months? Is that right?

"'M: Uh-huh.

"'P: And, what I'm driving at was this discussed? No. Okay.

"'M: Huh-uh.

"'P: Okay. Now,

"'M: I don't think Harold and I - Joan and I discussed it. I, and Cork and Harold have, but I don't think Harold and I have ever discussed it.

"'P: Did - did Harold know that you - that you did not love your husband?

"'M: Uh-huh. Maybe I shouldn't have said that, because maybe I had a - as I told you, love is a word, and I certainly had something for Cork. I mean, if I let myself go, I could just shatter. I don't even think about it, because the day'll come when I have to face it, and I - I don't like [1059]

"'P: All right. Then, oh—

"'M: Now, what do you have for a personality like that? When you have them, you think you don't

love them. You don't have them, you feel, sick -LG, or something, I don't know.

"'P: Well.

"'M: I felt like Cork was rejecting me for years. I'd give anything.

"'P: You've been married—

"'M: Fifteen years.

"'P: Fifteen years, and I think in our - in talking up there, as I recall you said for fourteen of these years, you were - Again I'm looking for the right word - neglected? Is that right?

"'M: Rejected.

"'P: Rejected! I'm sorry. I'm sorry, and after you filed for this divorce, is when he -

"'M: He realized that. You see, it was his background. It wasn't that he was being cruel. It's his background and his parents - His father was German, and Cork was not raised affectionate and demonstrative feeling, and to him, it was almost sissified. It wasn't - and it wasn't until he felt he was losing me that he just came to, and decided this was something he and he could do, you know?

"'P: Uh-huh. Then, do you mind telling me, I [1060] know we discussed this, and - and - you've got to realize I'm fishing here, too. I believe I told you that, and - and this may help you, and it may not help you; I don't know. I'm trying to be fair with you. How did he first find out about - your husband - find out about you and Art Hayton?

"'M: Of course, he lived with it for years, you know? Always felt that I liked him, and after Elaine died, he pushed the panic button one night and just asked me right out, and that, I think, was when he really - the first time he really faced it.

" 'P: Now, did Elaine know about you and Art?

" 'M: Huh-uh. I don't think so.

" 'P: Did she confide in you?

" 'M:

" 'P: Was she concerned over Art's behavior with other women?

" 'M: Uh-huh.

" 'P: But she didn't know that you - that you and Art were going out?

" 'M: Well, because we had been so buddy-buddy for so many years that things were really no different on the surface, and I really don't think that this - you know.

" 'P: And Art and your husband were good friend, too: Is this— [1061]

" 'P: Let me ask you something now. How do you feel about Mr. Hayton?

" 'M: Now? LG Bah!

" 'P: About - how about insurance? Mrs. Miller? In regard to Mr. Miller. What kind of insurance did Mr. Miller have?

" 'M: He had a $20,000 policy that we'd had with Prudential - not Prudential, it was Connecticut, for [1070] years, and he had a $50,000 that he's had with Prudential, for years, and I think -I'm not positive - I - you could see he has a business man, and they run everything, and I don't go down and look through the boxes—

" 'P: You think what?

" 'M: But I think there was a policy with the - it would be small, with the Dental Association. Now, as far as I know. He never asked, consulted with me if he wanted to take some out.

" 'P: Double Indemnity?

"'M: Some of them are - I'm not - Connecticut definitely is, and I think Prudential is. I don't think the dental would be.

"'P: Now, also, his - this building that he - He's buying this building, is he not?

"'M: No, he's leasing it.

"'P: I'm sorry. He's leasing it. I was under the impression that he was buying the building.

"'M: No, everthing in it's his, but he was leasing the building.

"'P: Is this on a—

"'M: Five year leas, [*sic*] I think. I'm not positive, now, I'm not positive. I think it's—they won't lease to you usually under that length of

"'P: How as - how was the debt situation?

"'M: When he took off - when we separated in the [1071]

"SAN BERNARDINO, CALIFORNIA, FEBRUARY 4, 1965, 10:00 O'CLOCK A.M.

—oOo—

"THE COURT: Mr. Turner.

"MR. TURNER: Miss Fisk, will you take the stand, please?

"PEGGY FISK, called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

"THE CLERK: State you name and spell it.

"THE WITNESS: Peggy Fisk, F-i-s-k.

"DIRECT EXAMINATION

"BY MR. TURNER:

Q Miss Fisk, back last October were you employed by the San Bernardino County Sheriff's Office?

A Yes, I was.

Q And were you employed as an undercover agent in connection with investigation being made by the sheriff's office at that time?

A Yes, sir.

Q Did you receive an assignment from the sheriff's office to pretend to be a prisoner booked into the County jail?

A Yes, I did. [1098]

Q And were you in fact booked into the jail just as a prisoner?

A I was.

Q When was that?

A Approximately October the 9th, sir.

Q How long did you stay in jail?

A I think until October 15th.

Q Now, while you were in jail, did you become acquainted with Lucille Miller, who is seated at the end of this table?

A Yes, I did.

Q She was also a prisoner in the County Jail at that time, Miss Fisk?

A Yes, she was.

Q Now, while you were in the County Jail, did she at anytime talk to you about herself and the reasons she was in jail?

A Yes, she did.

Q Did she ever talk to you about her husband and any domestic problems she had had?

A Yes.

Q What did she say in connection with her domestic problems with her husband?

"MR. FOLEY: If the Court please, may I ask a question on voir dire?

"THE COURT: Yes.

"VOIR DIRE EXAMINATION [1099]

"BY MR. FOLEY:

Q Did you inform Lucille Miller that you were a law enforcement agent?

A No, I did not.

Q Did you inform her of her right to remain silent?

A I told her that she should discuss this with her attorney.

Q And did you tell her that she had a right to have an attorney present when she talked to you?

A Not in so many words, no, sir.

"MR. FOLEY: Well, all right. Thank you. I have no further questions.

"DIRECT EXAMINATION (CONT'D)

"BY MR. TURNER:

Q What did she say in regard to her domestic problems?

A Pertaining to the divorce, sir?

Q Yes.

A She said that she and her husband had filed for divorce at one time but before his death they were reconciliated.

Q Did she state to you whether—well, did she state to you what her thoughts were towards her husband as to whether or not she loved him?

A She said she did not love her husband but she respected him.

Q Did she mention being interested in anyone else?

A Yes, she did. [1100]

Q Who was that?

A Mr. Hayton, Arthwell Hayton.

Q What did she say in that regard?

A She said she has always loved Mr. Hayton and still loves him.

Q Now, did she indicate what her future plans were?

A Yes, sir, she did.

Q What did she say?

A She said as soon as this mess was over, that she planned to take her daughter Debbie and the two boys away to Europe with the insurance money?

Q What did she say about the insurance money?

A She said that she would receive over a hundred thousand dollars in insurance because of the accidental death.

"MR. TURNER: I have no further questions.

"CROSS-EXAMINATION

"BY MR. FOLEY:

Q Was it late on the night of October the 9th that you were booked into the jail?

A Yes, sir, it was.

Q About what time of night was it?

A I don't recall what time, sir.

Q After 11:00 o'clock?

A I'm not sure. I said before—I think I told you last night I thought it was sometime around midnight. I'm not [1101] sure of the time.

Q And you were placed in the jail cell with Lucille?

A Yes, I was.

Q Two other girls in that cell?

A That's right.

Q Do you kow who they were?

A I met the girls, yes. I don't remember them now.

Q And did you have a conversation with Lucille at that time?

A Pertaining to this case, no, sir. I don't think so.

Q But you did have a brief conversation with her, didn't you?

A Mrs. Miller was awake when I went in there, and there was quite a bit of noise going on outside, yes, and everyone was kept awake that night.

Q And Mrs. Miller didn't get much sleep that night, did she?

A Not that I recall. I don't think anyone slept that night.

Q And that was the night of October the 9th?

A Yes, as far as I remember, the 9th.

Q Now, you were working under the direction of Capt. Bob Graefe, weren't you, when you were sent up there?

A Yes, sir, I was.

Q And also under Lt. Shepherd's direction?

A That's correct.

Q And you were told to go up there and to listen to whatever Lucille might say?

A That's correct. [1102]

Q And when you were booked in, Lucille's attorney, one of Lucille's attorneys was sitting outside that jail?

A I think so. I didn't recognize him, sir.

Q And this period of time that you were in that jail was the period of time when Lucille's attorneys were sitting around the clock, is that right?

A Yes, sir, that's correct.

Q And you saw me up there, too, didn't you?

A I think I rode the elevator with you one day, yes.

Q And you pretended that you had been placed in jail on a possession of narcotics violation isn't that right?

A That's correct.

Q And you stayed there in the jail from the 9th to the 15th, right?

A Yes, as far as I remember on the dates, sir.

Q And as you would get little bits of information from Lucille from time to time, you would give them to one of the vice officers who would come up to see you?

A That's correct.

Q But you didn't make any written notes, though, of any of these conversations, did you?

A No, sir. I couldn't in jail.

Q Now, the vice officers didn't see you everyday, did they?

A I do not know. I don't think so.

Q All right. So sometime—

A But I'm not sure of that. [1103]

Q Sometimes then when you gave them bits of information, it covered more than a day's conversations with Lucille, didn't it?

A That's correct.

Q Now, one of those days, one of the vice officers gave you a clipping out of the front page of the San Bernardino paper, didn't he?

A Yes, sir. They brought it with them and it was placed on the table.

Q And you were told by one of the vice officers to take that clipping up and show it to Lucille, weren't you?

A That's correct.

Q And that clipping was the story about Lucille being refused permission to go to her husband's funeral?

A I do not remember what the clipping said.

Q It did say something about her husband's funeral, didn't it?

A I do not remember, sir. The clipping was destroyed.

Q And when you showed that—strike that. When you went up in the jail with that clipping, you had it underneath your uniform, didn't you?

A That's correct.

Q And when you began to talk to Lucille, you removed it from underneath the uniform and told her that you had snitched it downstairs without anyone seeing you?

A That's correct. [1104]

Q And you pointed out different things in that article to Lucille, didn't you?

A I don't remember pointing out any specific things to her, no, sir.

Q And Lucille appeared to read part of that article, didn't she?

A Yes, sir.

Q And didn't you say to her, 'Look at what the press is doing to you. They are ruining you'?

A I don't remember saying anything like that.

Q Last night didn't you tell me that you could have something like that?

A I said there is a possibility that something to that form could have been said but I don't remember saying that, no, sir.

Q And in that conversation with her you told her that 'Your attorneys aren't doing you any good,' didn't you?

A I told her at one time I had an attorney which did not do me much good.

Q And you also told her that she should think about it because maybe this would happen to her?

A That's correct, I did.

Q And, of course, you were lying to her when you told her that you had an attorney who had not done you any good, is that right?

A Not necessarily, no, sir. [1105]

Q Were you or weren't you?

A No, sir, I wasn't lying to her.

Q Now, did you tell Lucille that you had talked with Frank Bland and he promised to drop the charges against you and give you a floater out of town?

A I told Mrs. Miller that I had talked to Mr. Bland and there had been a discussion concerning a floater out of the state for me.

Q Did you tell Lucille that 'I put all my trust in Mr. Bland and maybe it would do some good for you if you tried the same'?

A That is correct.

Q You told Lucille that your own father had burned to death?

A That is correct.

Q And actually he did, didn't he?

A He has burned to death, yes.

Q Did you tell Lucille that you had been shown a picture of your own father and it has bothered you the rest of your life?

A No, sir, I did not mention anything about a picture. If there was anything mentioned about a picture, it was one that was taken before my father's death, which was many years ago.

Q You told Lucille that your father had picked up a gas can by mistake instead of an oil can, is that right?

A Yes, that's correct. [1106]

Q Now, in addition to that particular instruction that was given to you, that is, to take up this newspaper and show it to Lucille, what other instructions were given to you by the vice officers in connection with Lucille?

A Mainly to listen.

Q And to talk?

A There was one occasion when I did mention something about—concerning four men from the district attorney's office in the hall which I supposedly overheard a conversation.

Q And you were told to tell her that?

A That is correct.

Q And actually you told Lucille that you had overheard a conversation in the hall between four men whom you thought to be from the district attorney's office or connected with it, and one man had turned to the other and said, 'Getting back to the Miller case, Arthwell Hayton came in and blew the top off the case'?

A That's correct.

Q That is what you told Lucille and that's what you were told to tell her?

A Yes.

Q Now, when you booked in that first night, there were four girls in the cell, right?

A Yes, sir.

Q And then the next day two of the girls were taken out of the cell? [1107]

A I do not remember when the other two were removed.

Q Then after—then that left you and Lucille all alone in that cell, right?

A That's correct.

Q Now, were any of these conversations tape recorded or bugged in any way?

A No, sir.

Q Now getting back to the conversation about the trip to Europe and the insurance, isn't it a fact that Lucille told you that when this mess is over, that she would probably move to Europe so the children wouldn't be crucified?

A So that she and her children would not be crucified,

Q Did she also tell you—strike that. She mentioned insurance money to you, isn't that right?

A That is correct.

Q Now, which day was it that she mentioned insurance money to you, 9th, 10th, 11th, 12th, 13th or 14th?

A Sir, this is very hard to say. As I tried to explain to you last night, my report was written on the 12th and partly on the 14th. There was one day she did—there were several times she mentioned the insurance.

Q Now, in between—strike that. During the nighttime Lucille would be in the cell, isn't that right, at night?

A That's correct.

Q But during the daytime wasn't—during these days wasn't [1108] she generally outside the cell sitting with me or one of my associates?

A That's correct.

Q And, of course, you don't know what I may have said to Lucille about insurance proceeds or one of my associates, do you?

A No, I do not.

Q And did Lucille—did you ask Lucille how many policies she had?

A No, sir. I don't think so. Not that I remember.

Q And the figure she gave me a vague figure, around a hundred thousand, is that what she said?

A She said it was over a hundred thousand dollars.

Q Now, she talked to you about the fire, too, didn't she?

A Yes, she did.

Q She told you she didn't know how the fire started, didn't she?

A Yes, sir, at one time she did.

Q She said when the fire started—strike that. She said when the accident happened, that everything went blank, didn't she?

A Yes, sir, she did.

Q She said she remembers that she picked up a rock and threw it through a window, didn't she?

A Yes, she did.

Q She said when she saw that she couldn't do anything for [1109] her husband, she started for a neighbor's house?

A That's correct.

Q She said she screamed for the neighbor to call the fire department, the police department and her attorney?

A That's correct.

Q She told you that her husband had been in the front seat and that he was slumped over, slumped down with a blanket around him?

A Yes, sir.

Q She told you that she had had a lot of trouble with her husband and she had filed for a divorce several months ago, didn't she?

A Yes, she did.

Q She told you that she had not seen Arthwell Hayton for approximately three months, didn't she?

A That's correct.

Q She said she was afraid that he was going to be brought into this court, didn't she?

A Yes, she did.

Q She told you that she respected her husband?

A Yes, she did.

Q Did she also tell you that she was very fond of her husband?

A She told me she did not love her husband, sir; she respected him.

Q She mentioned something to you about her husband being on [1110] barbituates [sic] or narcotics, didn't she?

A She mentioned narcotics, yes, sir.

Q You do undercover work in narcotics, don't you?

A Yes, I do.

Q So naturally you must have asked her what kind of narcotics?

A As I stated yesterday, I may have, yes.

Q What did she tell you?

A There was nothing. She said nothing about what type or kind.

Q Well, you don't remember then whether you asked her or didn't ask her, isn't that right?

A Well, like I said before, no, sir, I don't remember directly whether I asked her anything like that or not.

Q Now, there is a lot of—there is a lot about those conversations that you don't remember, isn't that right?

A That's correct.

Q And what you do remember, are you certain that it is accurate?

A Yes, sir.

Q Now, the report that was made concerning these conversations, that report wasn't typed by you, was it?

A No, it was not.

Q So you yourself have never made any report of any of those—written report of any of those conversations?

A No written report, no, sir.

Q No typed report? [1111]

A No, sir, I have not.

Q And you have refreshed your memory as to what Lucille told you from a report written by somebody else?

A That's correct.

Q You talked to Sheriff Bland during those days, too, didn't you?

A Yes, sir, I think I talked to him one time. Maybe twice. I'm not sure.

Q Did he give you any special instructions?

A Only to listen.

Q What is that?

A Only to listen.

Q Did you talk to any deputy district attorney during those days?

A I'm sorry. I can't hear you, sir.

Q Did you talk to any deputy district attorney during those days?

A I think there was one present but I'm not sure. I was very new here at this time and I didn't know very many people.

Q Did you talk to Mr. Turner during those days?

A I'm not sure of that, sir. I think I talked to him one time.

Q Now, Lucille talked to you about her daughter Debbie, too, didn't she?

A Yes, she did. [1112]

Q She told you that her daughter was beautiful; that she was very proud of her daughter, and that she loved her daughter very much, didn't she?

A That's correct.

"MR. FOLEY: Thank you. I have no further questions.

"REDIRECT EXAMINATION

"BY MR. TURNER:

Q Who did type the report, Miss Fisk?

A I think that was a secretary, Carol, downstairs in vice and narcotics.

Q Who did you give your report to?

A Mr. Shepherd, Lt. Shepherd was the one who took the report at the time.

Q He is the one who at that time was in charge of the vice and narcotics?

A Yes, he was.

Q Now, your father was not burned in an automobile, was he?

A No, he was not.

Q Fire in a house?

A That's correct.

Q And you say that he picked up a gas can instead of what?

A There was two cans, sir, one containing gasoline and one containing kerosine, [sic] an [sic] he picked up the gasoline can instead of the kerosine can and poured it into a blazing [1113] fire.

The results of that is what caused his death?

That's correct.

"MR. TURNER: I have no further questions.

"MR. FOLEY: Thank you. I have no further questions.

"MR. TURNER: Thank you very much.

"MR. FOLEY: This witness may be excused, counsel.

"MR. TURNER: Thank you.

"THE COURT: You are excused then.

(Witness excused.)

"MR. TURNER: Mr. Hayton, please.

"*ARTHWELL C. HAYTON,* called as a witness by and on behalf of the plaintiff, having been first duly sworn, testified as follows:

"THE CLERK: State your name and spell it, please.

"THE WITNESS: Arthwell C. Hayton, H-a-y-t-o-n.

"*DIRECT EXAMINATION*

"*BY MR. TURNER:*

Q Where do you live, Mr. Hayton?

A Redlands, California. [1114]

Q Did she ever actually ask you to—did she ever actually retain you for the purpose of handling a divorce?

A She asked me to represent her in a divorce action, which I declined and told her that I did not at that time handle divorce actions, and in any event, I would not represent her due to our very close relationship.

Q When she first discussed the possibility of divorcing her husband, I take it that was several years ago?

A Yes, sir, it was. [1119]

Q Now, I take it she was just talking to you as a friend who was also a lawyer?

A Yes, sir. Usually these talks would either be in her home or possibly in our home. Occasionally in my office, but never as an attorney.

Q In these conversations did she discuss her thoughts toward her husband?

A Yes, sir.

Q What did she say in that regard?

A She told me that in substance she never really loved Cork; that she felt that it was a mistake that they were married in the first place, and she was very young at the time, and that while she had lived with her husband and had children with him, that they were never really suited for each other and that she did not feel that she could continue to live with him.

Q In those conversations did she discuss with you why she didn't go ahead and divorce him?

A Primarily—yes, she did. [1120]

Q What did she say?

A Primarily she was concerned that if she divorced him, while she thought she could get along as far as a person, she was concerned whether she could get along financially, and she discussed with me whether I thought that she could get child support and alimony sufficient to keep her and support her.

Q Did she ever suggest to you that you divorce your wife and marry her?

A Yes, she did.

Q Specifically calling your attention to April of last year, about the 20th or 21st of April, somewhere along in there, did you receive a phone call from Mrs. Miller suggesting that the two of you get together?

A Yes, I did.

Q Did you receive that call at home or at the office?

A As far as I recall, it was at my office.

Q And what did she say?

A She asked me if she could see me either in the office on that particular day—

Q Did you make some arrangements with her?

A I told her that I had appointments that day, and she asked me, well, could she see me for lunch, and I said yes, I could see her for lunch.

Q Did you have lunch with her?

A Yes, I did. [1121]

Q Where?

A At the coffee shop or the dining room at the Holiday Inn.

Q Just the two of you present at that luncheon?

A Yes. She drove from her home and I drove from my office and met her there.

Q What was said in that luncheon conversation?

A We talked of general topics and then she talked particularly in connection with my marriage and her marriage.

Q What did she say in that regard?

A She told me at that time that she had definitely decided to divorce Cork; she could not live with him any longer; that she had thought about it on other occasions but had put it off, and that now she had made a decision, and she said regardless of what would happen, that she was going to go ahead and file a divorce action. She had—she told me in substance, she said, 'I know you won't handle it for me. Who would you suggest that I go to?' And I said, 'Well, you live in the Ontario area. I would suggest that you either go to Harold Lance or Mr. Beloud,' who used to be my partner. Well, she said, 'Harold, of course, I know, and I wouldn't want him to handle it and so I'll go to Beloud.' And she further said that she just had had enough

of living with Cork; that he was completely unhappy and irrelevant in his feelings about her desires for her home, the home that they were building, and that she just could not live with him any longer. [1122]

Q In that conversation did she make any suggestion to you concerning your marriage?

A Yes, she did.

Q What did she say in that regard?

A She said, 'Arthwell, you know that over the years I have admired you and I think you are successful in your practice and I admire the—I like the social and political people that you associate with, and really Elaine does not appreciate these things like I do.'

Q Elaine is your wife?

A Elaine is my wife. And she said, 'Elaine isn't the attractive person that you should have or that you would like,' and that, 'I'm going to divorce Cork and you know how I feel about you, and I think that you should talk to Elaine and ask her to divorce her.'

Q And did you reply to that?

A Yes. I said. 'Lucille, I don't want to hear you talk like that. You know that I love Elaine. Under no circumstances would I divorce Elaine. We married each other. We have had a happy marriage. She—there may be some things that I would like to have changed in her, but I'm sure that there are some things that she would like to have changed in me. She is a wonderful mother. We have four lovely children. And I wouldn't divorce Elaine for anything in the world.'

Q Go ahead and relate what she said and what you said on [1123] this occasion?

A Well, she said, 'Look, Arthwell, Elaine really isn't suited for you.' She said, 'I've been as close any anybody with Elaine. She has felt sometimes that you

would like to her [sic] dress better or go to things with you, and she is not going to change and you are not going to really continue to be happy with her.' I said, 'Lucille, that just it not true. I love Elaine and she is a wonderful person and I would not in any way leave her.' I said, 'I have four children, and if I were in any way inclined to divorce her and marry you, what would happen to the children?' She said, 'Children are able to adjust,' and she said, 'Bill loves you and he would come with you and us, and Terry likes Debbie so much and she would come and live with us, and Elaine would have the two little children.' And I said, 'Lucille, that's just ridiculous to even talk like that.' I said, 'You know that if that were to happen, in a few months or a few years I would be doing nothing but wanting to be with my children and have all of them together, and you wouldn't be happy and I certainly wouldn't be happy.' And I said, 'Frankly, I think that you should think in terms of living and remaining with Cork. You may have your differenses but I think he is a very nice fellow and I have always liked Cork.' Well, she says, 'I can't take him any longer. I'm going to divorce him in any event,' and she said, 'I'm pretty persistent and I [1124] can wait a long time.' And I said, 'Well, you are going to have to wait a long time if you are going to wait for me because I'm not going to divorce Elaine because I love her and I have a happy family.'

Q Is that the substance of the conversation?

A Yes, sir.

Q This was on what, Tuesday or Wednesday, April 20th or 21st?

A Yes, sir, it was.

Q Now, a couple of days later, on Friday, did you go on a trip?

A Yes. I took my son Bill and five of his playmates on a weekend birthday party on our boat, the Captain's Lady, to Catalina Island.

Q Now, while you were over there, you received word that your wife had died?

A Yes, sir, I did, by radio.

Q And did you return at once home?

A The coast guard flew a plane over to the island and flew me home.

Q And did you land at a little air field? [1125]

A Yes, sir, we landed at Tri-City Air Field.

Q That is the little airport down here that is sort of between Colton and Redlands?

A Yes, sir.

Q Did some of your relatives meet you at the airport?

A Yes, sir, my sister from Riverside was there and another friend and Mrs. Miller.

Q When you got out of the plane, did Mrs. Miller speak to you?

A Yes.

Q What happened?

A Well, I was sobbing and crying, and she came over and put her arms around me and we walked over to where her car was and she asked me if she couldn't drive me home.

Q Did she?

A Yes, she did.

Q Did she help take care of your children then for the days that followed?

A Yes. When I arrived home, the other children were there and the pastor of our church was there and some of our friends were there at the home, and after —they did not know that my wife had died, and after

I told them, then Mrs. Miller took the two little children with her to her home.

Q Did she keep them at her home until the funeral?

A Yes, she did. [1126]

Q The funeral I believe was the following Thursday, is that right?

A I believe that is correct.

Q And did she bring them back for the funeral?

A Yes, sir, she brought the two children to our home and the automobile from the funeral service—from the funeral home was there for the family and we rode down to the funeral.

Q Now, from the time you returned home after your wife's death for the next few weeks about how often did Mrs. Miller come to your home?

A I remained home from the office for about two or three weeks, and during that period of time Mrs. Miller would come back and forth I would say at least on the average of once a day or once every other day, and she would either bring the children over or take the children with her.

Q Now, I believe your wife's death was April 24th?

A Yes, sir.

Q In late May or early June, sometime around the first of June, did you receive a call and a visit from a pastor of your church?

A Yes, sir, Pastor Hassenphlugg of our church in Redlands asked to see me and he came to my office in Loma Linda.

Q Now, after you—you did have a talk with him then at your office?

A Yes, I did. [1127]

Q And sometime after you had a talk with him, did you speak with Mrs. Miller on the phone?

A Yes, sir, I did.

Q By the way, during that period, month of May, did Mrs. Miller ever telephone you?

A Oh, yes. She was either a constant visitor at our home or she would telephone or talk to me.

Q Now, how long after your talk with the pastor before you next spoke with Mrs. Miller?

A Well, immediately after the pastor talked to me, sir, I—he talked to me about Mrs. Miller, and I immediately then called her on the phone. By 'immediately,' I mean sometime that day, as I recall.

Q And you spoke with her on the phone then?

A Yes, I did.

Q What was said in that conversation?

A I said, 'Lucille, the pastor has talked to me. I'm very, very concerned about what he said. He told me that he was concerned about things that you had been saying in Redlands and Loma Linda area.' I said, 'Lucille, I just don't know how you could say these things; that you have told people that I'm going to marry you and move over to your home in Alta Loma, and that's just not so and you know that that isn't so, and that other things that you are telling about our relationship. I'm very concerned about it. The pastor is concerned about it for my reputation, for that of the [1128] children, and I would just suggest that you no longer call me or come over to our home or see the children; that I certainly don't want anything to be done or said that would cause any type of question to —as far as our conduct is concerned, to give any rise to any gossip or speculation among our friends in the Loma Linda-Redlands area. I'm concerned for my reputation and that of the children.

Q What did she say?

Q Mr. Hayton, just before the morning recess you had indicated that you had had a conversation with Pastor Hassenphlugg and that after that you had talked to Mrs. Miller over the phone and you had related to her what the pastor had said, and I had just asked you what did Mrs. Miller say, and would you please answer that? [1129]

A Mrs. Miller said in substance, 'Look, Arthwell, that's one of your troubles, that you listen to those people over in Redlands and Loma Linda too much, and that if you would just stop listening to your church friends in Redlands; that they are hypocrites and supercilious, and your trouble is that you are too concerned about what they say.' And I said, 'Well, regardless of what your feelings are, Lucille, I live in Redlands and I live in Loma Linda, and my family lives here, and I'm concerned about what these people say for my sake and my children, and I don't want, therefore, to have you come over to my house anymore because I'm very concerned about the things that have been told to me that you have said to other people.'

So I take it in that conversation you told her that you didn't want her to call any more or visit any more?

A I certainly did.

Q All right. Now, shortly thereafter there has been some testimony that I think around June 5th Mrs. Miller was involved in an automobile accident, and did you hear about that?

A Yes, sir, I did.

Q And did she call you in connection with that accident?

A Yes, I received a call that she and her daughter Debbie had been in an accident. [1130]

Q And did she ask you to represent her legally in connection with the accident?

A Yes. If I remember correctly, I received a call—I'm not sure it came directly from her or whether it was relayed to me by my secretary, but in any event, the information was to me was that Mrs. Miller had requested that I visit her at the hospital where she was for at least a day or two after the accident.

Q Now, shortly thereafter did you receive a call from Mrs. Miller after she had returned home from the hospital?

A Yes, I did.

Q And as a result of that phone call, did you go to her home?

A Yes. She called me from her home and she said, 'Arthwell why didn't you come down to the hospital, to see me?' And I said, 'Well, I sent Bob Peach, my investigator, and I have all the information, and I'm very—I have the information to proceed, and I feel that your case has merit from a legal standpoint and certainly the medical information [1131] indicates that you were injured and your daughter Debbie was injured, and I'll be glad to represent you strictly on a legal basis in this matter.' And she said, 'Well, but I want to see you and will you please come on over to the house this evening?'

Q Did you?

A Yes. And I said, 'All right, I'll come over.'

Q And did you go over?

A Yes, that evening I took my son Bill and I went over to her home in Alta Loma.

Q And when you got to her home in Alta Loma, was there anybody else home?

A Her children were there. I did not see Dr. Miller. And she was in bed in her bedroom.

Q What did she say?

A She said, 'Arthwell, what is wrong as to why you will not [1132] come and see me?' And I said, 'Lucille, I made it plain to you that I do not want to see you or have you see me or have any communication with me or my children. I told you what the pastor said and I'm very concerned that so recently after my wife's death that there not be any basis for any comments or things that would reflect adversely upon me or my children, and if you want me to handle your legal matter, I'll be glad to do that, but I do not want to have any contact in any type of social or personal way.'

Q All right. When is the next time that you heard from her?

A I believe that she called me occasionally during the next two or three weeks at either my Loma Linda office or my San Bernardino office, and at that time the calls had—I had not instructed my secretary not to put the calls off but I would be rather curt with her and not discuss anything further with her.

Q Well, specifically, about a week after your visit to her home with your son, as you have just described, did you receive a phone call from her in which she referred to the possibility of a visit at the beach?

A Yes. That was at my home.

Q What was said in that conversation?

A She said, 'Arthwell, certainly by now any gossip or anything that anybody may have said at Redlands has died down, and Loma Linda, and I would like to see you,' and she said, 'Please see me and please let's go down to the beach [1133] together. I'm going to be down for a week or so at Eddie Ford's trailer—that's

Dr. Ford—and Yolanda and I are going to be down there, and please come on down and let's spend some time down there together.'

Q What did you tell her?

A I said, 'Lucille, I, under no circumstances, want to see you. I have made it plain to you that I do not want to see you socially, and certainly I would not go down to the beach or any other place and meet you.'

Q Now, sometime shortly after that there has been some testimony that around the middle of June there was what has been described as a boat incident. Do you know to what I refer?

A Yes, I do, sir.

Q Where did you go?

A We had been invited to a western type party in the San Bernardino area up at—up near Highland, in the Del Rosa area, and I picked this friend up in the Redlands area and we went there for this party or gathering.

Q Did you see either Mrs. Miller or Sandy Slagle at the [1134] square dance?

A No, sir, I was not aware of their presence at all.

Q Now, you eventually left the square dance?

A Yes, we did. We left the square dance about 10:00 o'clock. [1135]

Q Now, you went down to the boat. About what time did you arrive at the boat?

A I believe about 11:00, 11:15.

Q And did you take the boat out?

A Yes, sir. We took a harbor cruise and cruised around Lido Island and Balboa Island and then came back to the mooring.

Q How long were you going around the harbor?

A About forty-five minutes to an hour.

Q Were you piloting the boat? [1136]

A I was, sir.

Q And when you came back to the—what do you call the place where you keep the boat?

A The mooring.

Q When you came back to the mooring, is there a sort of a slip into which you pull the boat?

A There is. There is a slip into which you navigate the boat.

Q Ordinarily like when you are leaving the boat, how many lines do you have tying the boat up?

A There are four mooring lines, two forward and two aft, one on the starboard and one on the port, and two on the stern, port and starboard. [1137]

Q When you came back after that tour, in what way did you secure the boat in the slip?

A I maneuvered the boat into the slip and by a boat hook going forward to the bow and the pulpit, leaning over, you can reach and pick up the loop of the bos [sic] lines with the boat hook and then place that onto the chuck. You do not have to get off of the bow to secure those two lines. And I secured those two lines then on the chuck, which had the three or four half inches on the cleats on the dock. The cleats you leave there and you leave the lines there, and when you come back in, you reach over and just with the boat hook put the loop around the chuck. [1138]

Q All right. Then you went in the cabin. What did you do there?

A We went in the cabin, and we have a portable television in the main salon, and my friend fixed some

hot chocolate and we had something to eat and sat on the couch and watched telvision.

Q Were you aware of anyone untying the boat while you were in there?

A No, sir, not at all.

Q How long were you there from the time you came in and secured the bow of the boat until you finally left?

A I would estimate in the area of thirty minutes.

Q When you—after the thirty minutes, when you left the boat, was the boat in the position where you had left it?

A No, sir, it was not.

Q What did you notice when you came out from the cabin? [1139]

A I secured the boat inside by pulling the switches off and then we opened the door, and the moment I opened the door, I noticed that we were out of the slip partially into the bay, and I then immediately went forward and I was able to jump from the bow over to the dock, and by means of my boat hook and a line I was able to pull the boat around into the dock.

Q How far had the bow drifted from its position in which you had tied it?

A Well, in terms of feet, I would estimate probably forty to fifty feet.

Q How long is the boat?

A The boat is forty-two feet.

Q Did you—after you brought it in, by the way, were the lines, the forward lines, the loops still over the chucks on the bow of the boat?

A No, sir, they were not over the—yes, they were over the chucks but they were untied on the dock.

Q So they were just trailing in the water then?

A Trailing in the water.

Q So you pulled the boat back in and did you secure it again?

A I did.

Q All four lines?

A Yes, sir. [1140]

Q All right. You didn't see Mrs. Miller or Miss Slagle around, did you?

A No, I did not see them nor did I hear anyone.

Q Then you went to your car and started returning home?

A Yes, sir.

Q On the way home did you see Mrs. Miller?

A I did.

Q Where was that?

A After we had left the boat, we were driving through Costa Mesa and about five miles before you get onto the freeway there is a—one or two stop signals, and I came to a stop signal and I glanced to my left and to my astonishment I saw Mrs. Miller in a Volkswagen.

Q Was she driving it?

A No, sir. She was in the—slumped down in the seat and had her hand over her face and was peeking through her fingers.

Q Who was driving it?

A Sandy Slagle.

Q All right. Then eventually you got on the freeway?

A Yes, sir.

Q Did you still see this Volkswagen? [1141]

A Yes, sir. It continued to follow me.

Q Did you change your speed?

A Yes. I was concerned that—I didn't know what she was going to do, and I certainly didn't want to have any scene when I took my friend home, and I changed my speed, and when I slowed down, it would slow down, and when I speeded up, it would speed up, and it kept following me all the way to Riverside.

Q What happened when you got to Riverside?

A Well, I frankly wanted to lose her, and so when we got to Riverside, I very quickly jammed on my brakes and made a right-hand turn on an off-ramp and I saw the Volkswagen jam on the brakes, but by the time—well, I didn't see what happened to it because I went on up the off-ramp and went into—went around several blocks and went into a service station to get gas.

Q Then you took your date on home?

A Yes, sir.

Q After you took her home, did you return to your house?

A I drove up the street to my house. [1142]

Q So what did you do?

A Well, I quickly reached over and locked the door and I stopped.

Q Then what happened?

A Mrs. Miller jumped out of the Volkswagen and she came over and grabbed ahold of the handle and tried to open it and started to yell at me.

Q What did she say?

A She said—she used a profane word and she said, 'You so and so, you had better open this door and let me in.'

Q What did you say?

A I said, 'Lucille, please don't yell. Don't wake up the neighbors.'

Q Then what happened?

A Well, she said, 'If you let me in and act civilized, I'll talk to you,' and I reached over and opened the door and she got in.

Q Then what was said?

A Well, I said, 'Lucille, did you—have you been following me all evening?' And she said, 'I have, Sonny Boy, and I know exactly everything that you have done.' And I said, 'Lucille, are you out of your mind? I can't imagine anybody doing something so stupid as that. I can't believe that you really have.' She said, 'Well, if you want to know what you did, I'll tell you,' and she reiterated [1143] everything that I did from the time that I left home and picked up my friend and ate tacos and went into the square dance, and she said that she was—I said, 'Did you stay there during that three hour period?' She said, 'Yes, I did, and we were peeking in the windows and I can tell you everything that you did in there and when you walked out on the balcony.'

Q She said they were peeking through the windows at the square dance?

A Yes, sir.

Q Okay. Go ahead. What else was said?

A I said, 'Lucille, I can't understand this. No normal person would do this. How in the world can you do something like this? It's so silly and stupid.' She said, 'Well, look, I've tried to be nice to you and I've tried to have you be nice to me,' and she said, 'You have been putting me off and you won't let me talk to you and you won't let me see your children or get

ahold of you at home or at the office, and this is the only way that I can talk to you.' And I said, 'Well, I don't want to talk to you, Lucille,' and I said, 'I don't want to see you,' and I said, 'If I ever did before, this certainly ends any thought I ever had.' I said, 'This is the most—the silliest and stupidist thing I could possibly imagine.'

Q In that conversation did she make any mention of your not [1144] being the first one to do something?

A Yes. She became very irritated and I asked, I said, 'Please leave. I want to go—I want to drive in the driveway. Please move your car.' And then she, towards the end she said, 'Look, Arthwell, I want to tell you something.' She said, 'I have never had any man in my life reject me,' and she pointed her finger and she said, 'You are not just about the first one to do it.' And I said, 'Lucille, get out of this car before I throw you out.'

Q Did she get out?

A Yes.

Q And did she drive away?

A Yes, she did.

Q Now, towards the end of June then did there—was there an occasion when you returned home from work and Jeffry wasn't there?

A Yes, there was.

Q And did you inquire as to where Jeffry was?

A Yes, I did. I had no idea where he was.

Q And were you advised that Mrs. Miller had taken him?

A I was.

Q Had she asked your permission to take him?

A She had not.

Q Jeffry was your youngest son?

A Yes, sir.

Q He is seven? [1145].

A Right.

Q Did you know where she had taken him?

A No, I did not at that time. I tried to find out because we had enrolled Jeffry in a summer bible school and he was just starting and I was very upset that he wasn't continuing to go there. And then I asked my daughter Terry and she told me that Mrs. Miller—she called her Auntie Lucille—had come over and picked up Jeffry and was going to take him to the mountains for a week.

Q This was news to you?

A I did not know a thing about it.

Q How long was Jeffry gone?

A About a week.

Q Did you find out later where he had been?

A Yes, I did.

Q Where?

A Well, she told me that he—she or—well, I mean —

Q Did Mrs. Miller tell you where she had had Jeffry?

A No, I don't believe that I saw her, but my daughter had told me that Mrs. Miller was taking Jeffry up to the mountains and I understood that it was up at Harold Lance's cabin. [1146]

Q Now going back to the latter part of July, about July 29th, did you receive a phone call from Mrs. Miller?

A I did, sir.

Q Where did you receive that phone call?

A I was at home in my home in Redlands.

Q About what time did you receive the first call?

A I received the first call about 9:00 o'clock, as I recall.

Q In the evening?

A It was in the evening.

Q What did she say?

A She said, 'Hello, Arthwell.' She said, 'I want to tell you how sorry I am for some of the foolish things that I did, and I know how upset you were about me going down to the boat and I know it was kind of silly and I'm awfully sorry. I wanted to try to see you and talk to you but Eleanor won't let me through and Wenche won't let me through and I can't get to you, and the only way I can try to get any information is through Erwin.' [1147]

Q That is Erwin Sprengel?

A Erwin Sprengel. 'And he won't let me get in touch with you, and I just want to be nice to you and I want you to be nice to me and I would very much like to have you come on over to my home this evening.'

Q Okay. And tell the rest of the conversation.

A I said, 'Lucille, I have made it very plain to you that I do not want to see you or communicate with you. Any normal person would understand what I have tried to tell you. And I don't want to be rude to you but I have made my thoughts plain to you and I have done everything that I know humanly possible to keep you away from me and my family and my home, and I'm not coming over to your house tonight or any other night,' and I hung up the phone.

Q Did you receive any more calls that night?

A I did, sir.

Q How long after you hung up the first one?

A About ten or fifteen minutes.

Q Who was that from?

A It was from Mrs. Miller.

Q What did she say?

A Her voice was different and she said in substance, 'Look, Arthwell, if you are not coming over to see me tonight, I'm going to come over to see you and I'm going to see you whether you want to see me or not.' And I made no answer and I hung up the phone. [1148].

Q Did you receive any more calls that evening?

A Yes, I did.

Q How long after you had hung up that one time?

A Well, I was in bed by that time and I think it was about fifteen or twenty minutes after that.

Q Who was on the phone?

A It was Mrs. Miller again.

Q What did she say?

A The first thing she said was, 'Arthwell, you had better not hang up this phone if you know what's good for you.' She said, 'I want to talk to you and you are going to listen to me.' She said, 'I tried to be nice. I tried to do everything for your children and to be nice to you.' And she said, 'Now you are not just about going to act this way to me.' She said, 'You had better not hang up this phone because I have got a few things to tell you.' She said, 'If you are not going to come over to see me,' She said, 'I'm going to see you tonight no matter where it is.' She said, 'If you don't want me to come over to your house,' she said, 'I'll meet you any place that you say.' And I said, 'Lucille, I'm not going to meet you at your house or any house or any other place. She said, 'Arthwell,' she said, 'I'll tell you exactly

what I'm going to do if you don't let me.' She said, 'First I'm going to go to that dear pastor of yours and tell him a few things; that when I do tell him that, you won't be [1149] in the Redlands church any more.' She said, 'Secondly, I'm going to go to all your friends in Redlands,' and she said, 'All of these hypocrites over there, I'm going to tell them about you,' and she said, 'By that time you won't have any friends in Redlands.' She said, 'Then I'm going to go to Loma Linda, I'm going to tell them in Loma Linda.' She said, 'You won't have any friends in Loma Linda. Then I'm going to go to your friends in San Bernardino at the court house,' and she said, 'If you were ever a lawyer before, your reputation will be ruined by the time I'm through.' And I said, 'Lucille, I'm just out of my mind.' I said, 'I don't understand what in the world is —you can say these things.' I said, 'I don't want to cause any trouble but,' I said, 'You have made these statements to me,' and I said, 'I'll go to Sheriff Frank Bland and tell him some things that I know about you and you'll wish you had never heard of Arthwell Hayton.' And she said, 'Look, Sonny Boy,' she said, 'If you think your reputation is going to be ruined, your life won't be worth two cents.' And I said, 'Lucille, I'm not going to listen to any more of that,' and I hung up the phone.

Q Did the phone ring again?

A. Yes, it did. [1150]

Q Do you recall about how long that was after the conclusion of the third call?

A It was very shortly. Within minutes after the third call.

Q And you answered the phone?

A Well, I debated, and it kept ringing, and I didn't want it to wake up the children and I did.

Q And who was on the phone that time?

A Sandy Slagel.

Q Did she tell whether or not Mrs. Miller was with her?

"MR. FOLEY: Just a moment.

A She told me that she was in the same room with Mrs. Miller. [1156]

Q (By Mr. Turner) What was said, sir?

A Sandy said to me, 'Arthwell, I am here with Lucille, and she is beside herself, and if you know, really, what is good for you and the children, you will see her tonight.' And I said, 'Sandy, I have told her and I have told you that I will not see her or her children now or at any time,' and she said, 'Arthwell, you have no realization or comprehension of what this woman is capable of doing, and for your own safety, you should [1157] see her tonight,' and I said, 'I will not,' and I hung up the phone. [1158]

Q Where did you go?

A I went to New York.

Q How long did you stay in New York?

A My two children and I stayed in New York and Washington for approximately two weeks. Between two and three weeks. Till about the middle of August.

Q Before you left, did you make any arrangements about your telephone at home?

A Yes, sir; I made arrangements to have my telephone disconnected. That is, I left instructions with Mr. Sprengel to have it disconnected.

Q When you returned, had it been disconnected?

A It had been disconnected, for about a week and then, a new unlisted number had been installed.

Q Now, after, between two and three weeks, did you return to your home?

A Yes, I did.

Q Then, what did you do?

A I, the latter part of August, went on a vacation with the family. The children and I spent time at the beach area and also on our boat at Catalina, and we were vacationing.

Q When did you return to the office?

A I returned to the office about the first week in [1160] September.

Q Now, also sometime during the first week in September, after you had returned home to the office, did you take your daughter up north?

A Yes, sir. I had made arrangements to have my daughter go to a parochial Seventh Day Adventist Academy, a boarding academy in the northern part of the State, at Rio Linda and I was planning on taking her and I did take her there.

Q On the way, did you stop at Mrs. Miller's house?

A Yes, sir; I did.

Q How did that come about?

A A day before, Mrs. Miller had come over to see Terry at my home and Wenche had called me and I told her to take the children out of the house and keep them or hide them with neighbors, and when I came home, and the—or the next day when we left, Terry brought that up, my little girl Terry, and she said, 'Daddy, I know that you have told me not to talk with Mrs. Miller or Auntie Lucille,' as she called her, 'But I feel so bad about not seeing Debbie before I leave. Couldn't we please stop by and just let me say goodbye to Debbie?'

Q So, on the basis of that, did you stop by?

A Yes, we did.

Q Did you go in the house? [1161]

A No, I did not.

Q You stayed in the car?

A I told Terry, I said, 'Terry, I do not want to go in the house. I want you just to go in and see Debbie. Say Goodbye to her and please do not stay more than a minute or two.'

Q Okay. Did you see Mrs. Miller?

A Mrs. Miller came out of the house.

Q And is that the last time that you saw her?

A That is the last time I have ever seen Mrs. Miller.

Q Until the trial?

A Until today. [1162]

Q And did you terminate your business relationship with Mrs. Miller at that time?

A Well, I had previously told Mrs. Miller by telephone conversation that I did not want to handle her case, and suggested that, this was after the boat incident, that she get some other attorney.

Nothing had happened and so the day after these telephone calls, I told Eleanor to dictate a letter immediately telling Mrs. Miller that I did not want to in any way represent her further in connection with this legal matter. [1166]

Q Now, between November of 1963, the end of November 1963 and June 1, 1964, and saw Lucille Miller on many occasions, didn't you?

A Yes, sir.

Q You have been out riding together alone in your automobile, haven't you?

A Yes, sir.

Q And this red convertible that you have, it is a Cadillac, isn't it?

A Yes, sir.

Q You have been to Palm Springs with her in that Cadillac, Mr. Hayton?

A Yes, sir.

Q And have you registered in motels with her, Mr. Hayton?

A Yes, sir.

Q And when you have registered with her in motels, Mr. Hayton, you used a different name, didn't you?

A Yes, sir.

Q One of the names that you used was Jack Wardruff, wasn't it? [1181]

Q (By Mr. Foley) And on June 22nd, 1964, you registered with her under the name of Jack Wardruff at the Caravan Motel in Riverside, didn't you?

A No, sir.

Q Did you ever register at the Caravan Motel in Riverside?

A Not—I do not believe so, sir.

Q When you used the name Jack Wardruff, did you use an address on 14th Street in Barstow, California?

A I really don't remember what address I used.

Q How many times did you register at motels with Mrs. Miller, Mr. Hayton?

A On two or three occasions.

Q Do you recall the date of the last time you registered at a motel with Mrs. Miller?

A No, I do not recall.

Q Do you recall what month it was, Mr. Hayton?

A Well, it was—I believe it was in June.

Q It was on June 22nd, wasn't it, Mr. Hayton?

A The date I do not recall, sir.

Q You know where the Caravan Motel is, don't you, Mr. Hayton?

A I do not know it by that name, no.

Q Do you know the Caravan Motel under another name?

A Well, I don't know. I registered with Mrs. Miller, sir but I don't remember the name of the motel. [1182]

Q Well, let's go back to the start. There came a time, sometime after November of 1963, when you and Lucille first went to a motel, isn't that right?

A Yes, sir.

Q All right. And now, that didn't happen overnight, did it? It took time to develop that relationship, didn't it?

A Not on my part, sir.

Q You were enticed to go to that motel by her?

A I was asked to go there by her.

Q All right. You didn't ask her to go?

A Well, I was asked to spend—I was asked to spend the evening with her. [1190]

Q Now, is your law firm handling the estate of Dr. Gordon Eugene Miller?

A Yes, it is.

Q I have asked you to bring with you the evidence of insurance on the life of Dr. Miller as it was existing at the time of his death, and have you brought that, sir?

A Yes, sir.

Q Specifically, sir, do you have in your file a policy issued by Connecticut Mutual Life Insurance Company, No. 1645159 in the amount of $20,000?

A Yes, sir.

Q Is that a double indemnity policy?

A Yes, sir.

Q What does double indemnity mean?

A It means that in the event of accidental death, it pays twice the face amount of the policy?

Q $40,000, then?

A Yes, sir.

Q Have you got the original and a copy of that policy?

A Yes, I do.

Q You prepared the copy, did you, or did you have it prepared?

A Yes, it was prepared in my office.

Q And this is a correct copy of the original?

A As far as I know.

Q Do you also have in your file a policy issued by Prudential [1194] Insurance Company of America in the amount of $50,000 on the life of Gordon Eugene Miller?

A Yes, I do.

Q Is that a double indemnity policy?

A No, it is not.

Q Who is the beneficiary?

A I believe Lucille Marie Miller and the children that exist by virtue of that marriage.

Q Was Lucille the primary beneficiary?

A Yes. I am not just certain whether she is the primary beneficiary or there were co-beneficiaries or not.

My notes from reviewing the insurance policy at the time I checked it indicate Lucille as beneficiary and the children equally. Now—

Q Do you have a photostatic copy of that policy, sir?

A Yes, sir; I do.

Q And this photostatic copy is a correct copy of the original?

A I believe so.

Q Referring back to the Connecticut Mutual policy you mentioned previously, the $20,000 double indemnity. Was Lucille Miller the primary beneficiary of that policy?

A Yes. The children were alternates.

Q Do you have a policy issued by Northwestern National Life, No. GC 3364-1117? [1195]

A I do not have the original of that policy. However, I have a photostatic copy of it.

Q Is that in the amount of $10,000 double indemnity?

A I believe so.

Q And is Lucille Miller the primary beneficiary?

A Yes.

Q You say you have a copy of that, sir?

A Yes.

Q And do you have a policy issued by Aetna Casualty and Surety No. 33FA163122 insuring the life of Gordon Eugene Miller for $10,000?

"MR. FOLEY: Pardon me. How much, Counsel?

"MR. TURNER: $10,000.

"THE WITNESS: That is not a life insurance policy. There is an accidental death provision within the automobile insurance and it applies to anyone who might be an insured within the meaning of that automobile insurance policy, and is not a life insurance policy, as such, but I do have that.

Q (By Mr. Turner) And would that pay the sum of $10,000 to anyone killed in an accident in the automobile?

A It pays $10,000 to the spouse residing in the same household.

Q And did that policy insure the life of Gordon Eugene Miller in that manner?

A Yes, I believe it did. [1196]

Q Was there also a funeral expense benefit in that policy?

A Yes. There is a $1,000 funeral or medical expense.

Q Now, in connection with this dental association, did you have a policy issued by the National Casualty Company of Detroit No. 511200?

A Yes.

Q Paying $1,000 upon the accidental death of Gordon Eugene Miller?

A Yes.

Q And was Lucille Miller the primary beneficiary?

A I think it is described in the policy as a spouse residing in the same household as the definition of the beneficiary.

Q By the same company, Policy X1011495 insuring in the amount of $1,000 Gordon Eugene Miller against accidental death?

A Yes.

Q Are those both through the dental association?

A Yes.

Q Do you have copies of those two?

A I believe so.

Q Is this both of them?

A No, that's one.

Q I believe I neglected to get from you a copy of the Aetna Casualty $10,000?

A The one on the automobile? [1197]

Q Yes, sir. Thank you, sir.

In addition to those policies, was there a policy issued by Scarborough and Company covering the chattel mortgage on the Ford Mustang?

A I have no personal knowledge that there was except from what the executor has advised me.

Q You are not the executor, sir?

A No. The First National Bank and Trust Company of Ontario is the executor. We are the attorneys that represent the executor.

Q I see. Have you learned that the indebtedness in the amount of $3,577.37 on the Mustang was paid by an insurance company?

A I believe it was, yes.

Q You have no copy of any policy on that one, do you?

A No, I don't. I merely have the photostatic copy of the promissory note and chattel mortgage indicating it is paid and with a notation: 'Credit life insurance loan.'

"MR. FOLEY: I will stipulate that it has been paid, if you wish, Counsel.

"MR. TURNER: Thank you, sir.

I offer the policies which are photostatic copies of the originals, if Counsel has no objection to the fact that they are photo copies. I offer them in evidence, your Honor, as People's next in order. [1198]

Q Do you recall the day that you took her to Palm Springs in March of 1964?

A I don't recall the particular day, Mr. Foley. I recall that we went down there.

Q You went to the spa?

A Yes, sir.

Q And you and Lucille—strike that. You and Lucille obtained a room at the spa, didn't you, that day?

A Yes, we did.

Q And you were intimate with her in that room that day, were you?

A Yes, sir.

Q And then you had dinner with her after that?

A Yes, we did.

Q And didn't you ask her at that meal—didn't you bring up the subject of marrying her at that meal?

A I never brought up the subject of marrying Mrs. Miller at that meal or any other meal. [1207]

Q Did she say to you, 'Don't you have the guts to tell me in person'?

A I think that she told me that 'Why don't you have the guts to either see me or tell me in person rather than tell me over the phone.'

Q Did you meet her in Harold's Club in Fontana and discuss that telephone conversation with her?

A I met her at Harold's Club. I do not know—we had lunch there. But if I recall, that was before the minister talked to me.

Q I'm not talking about having lunch, Mr. Hayton. I'm talking about meeting Lucille at Harold's Club and discussing this telephone conversation with the minister.

A Well, as I say, Mr. Foley, I remember having lunch with Mrs. Miller at Harold's Club and having a discussion with her at that time reiterating that I did not want to see her any further. Now, whether that was—or when that was in connection with when the minister talked to me, I really don't know, but I believe it was afterward. [1210]

A No, sir, we did not go to lunch at Skinner's.

Q You never went to lunch at Skinner's with Darlene and Lucille?

A No, we did not go to lunch at Skinner's. We went to dinner that evening with Mr. and Mrs. Sprengel, but I do not believe that we went to lunch.

Q That evening, the same evening that you met her, you went to dinner at Pitruzzello's, didn't you, in Riverside?

A There were five of us, yes, sir.

Q The five of you being you and Lucille and the Sprengels and Darlene Nemner?

A That's correct.

Q And that was on June 22, 1964, wasn't it?

A Yes, sir.

Q And after you had dinner, you and Lucille went to the Caravan Inn that night, didn't you?

A Well, it was—again you mentioned the name of the place, sir, and I don't remember, but we did go out that evening.

Q And that was about three weeks after the minister had talked to you, wasn't it?

A Yes, I believe that's correct.

Q Now, isn't it a fact that that night, Mr. Hayton, you gave Lucille permission to take Jeffry to the mountains the following day? [1215]

Q What date did this boat incident occur, Mr. Hayton?

A Well, again the exact date I'm not certain, but the best of my recollection, it was sometime in the early part of July. [1217]

Q About when was that?

A I believe that was in November.

Q Of 1963?

A Yes, sir.

Q And do you recall what motel that was you went to?

A Well, she asked me to come over to her home and from there we talked about where we would go, and I believe we want to Arcadia.

Q You went to a motel in Arcadia, you believe?

A Yes, sir. [1224]

Q You did want to marry Mr. Hayton, didn't you?

A At one time, yes.

Q When did you stop wanting to marry him? [1782]

A After the night that Sandy and I followed him to the boat.

Q Mr. Hayton phoned you on or about May 24th and told you that Rev. Hassenphlugg had told him there was a lot of gossip going around, didn't he?

A Yes.

Q And at that time I take it you still wanted to marry Mr. Hayton?

A Yes, I still felt then that I was in love with him. [1783]

Q When did your affair with Mr. Hayton start?

A The first part of December a year ago.

Q 1963?

A 1963.

Q You had known him, however, for some years before that?

A Yes.

Q At the time your affair with Mr. Hayton started and before it had actually started, were you consulting with Mr. Hayton concerning your desire to divorce your husband?

A No— [1784]

Q Mrs. Miller, during this period when you were going with Mr. Hayton, did you want to be unmarried to Dr. Miller?

A Toward the end, yes.

Q For how long have you wanted to be unmarried to Dr. Miller?

A Mr. Turner, our marriage was like everyone else's. It had its ups and downs, and there were times when things didn't go and times when they went well. I couldn't give you the specific answers on that.

Q You had been wanting to be unmarried to Dr. Miller for years, hadn't you? [1786]

A We had had our problems and there were times when I did feel that way, as I said before, and other times when I wouldn't have left him for anything, so it was both up and down. [1787]

Q (By Mr. Turner) Mrs. Miller, is it true that you lost interest in Mr. Hayton at the time of the boat incident, or after the boat incident?

A Wasn't your question, if I lost interest in marrying him?

Q All right. Did you lose interest in marrying him at the time of the boat incident?

A Yes.

Q Did you continue to feel that you were in love with him after that?

A Yes.

Q Are you still?

A No.

Q When did you stop feeling that you were in love with him?

A The minute that Cork was gone.

Q Up until the time Cork died you still felt then that you were in love with Mr. Hayton?

A Yes. [1788]

A I can't answer you because I don't know.

Q And PAC is sort of like Anacin, isn't it, a pain reliever?

A Repeat the question, please.

Q The PAC, that is something like Anacin, a pain reliever like Anacin, not the cyclopal, but the PAC?

A If you are referring to PAC, yes.

Q All right. And cyclopal, however, is a barbituate, [sic] isn't it?

A I can't answer. I have tried to look it up and I couldn't find the answer.

Q So, actually, Mrs. McIntosh, you, yourself don't know very much about drugs, do you?

A Oh, all I know is what I have had experience with.

Q Well, you have had experience with cyclopal?

A Yes.

Q And you don't know whether or not that is a barbiturate, is that right?

A The only way I can answer that is I know we had it in the office. I know what I was told it was to be used for and to give it to patients. That is the extent of my knowledge. [1952]

"Stop and think back why you married your wife or you married your husband. Probably a lot of reasons. You stop and start to analyze the reasons why a couple get married, there are a lot of reasons. Usually pretty wonderful reasons, but there are a lot of them, not just one thing. Same way with killing.

"It is hard to imagine anyone would kill somebody, and yet we know as human beings they do, and why, probably a multitude of things.

"The evidence shows that Mrs. Miller and Dr. Miller were married approximately 15 years ago, and as she said, she had been rejected for 14 of those 15 years. She said she did not love her husband. She said in fact that she loved someone else. I wonder why.

"You know, when you are talking about murder, you have got to try to see what makes people tick just a little bit. I don't know if we ever really know what makes people do what they do, what makes them tick, but you have got to try to understand them a little bit.

"Well, what sort of a person was Dr. Miller? You have had some indications in this trial. I think everyone who testified about him seemed to indicate that they liked him, he was a pretty good guy, good man, respected. That's what Mrs. Miller told the girl up in jail, she didn't love him but she respected him.

"He was a nice looking fellow, intelligent, [2016] loved only Mrs. Miller and Mrs. Miller wanted from everyone around her everything she could get from everyone around her. She wanted fun. She wanted company. She wanted talk. She wanted money. She wanted social status, prestige, things of this sort. She wanted to live in as fancy a house as the rest of them lived in, to be able to travel along with the wealthiest in her group.

"One gets the impression listening to some of the things that went on in the tape recording that Mr. Sprengel made of her conversation to him on July 31st, for instance, that she was a manipulator, a user of people for her own advantages.

"How about Mr. Hayton? She testified that she loved Hayton; that she had wanted to marry him. She testified that her love for him died the same time her husband died. I'm not sure what that would have to do with it. At any rate, that's her testimony. But that's not what she told the girl up in jail. She told the girl up in jail that she still loved Hayton, felt that he would come to her. She still had in her wallet Hayton's business card and the little souvenir placecard from the party the year before. She concedes that she wanted Hayton right up to the time of her husband's death, and, of course, she was arrested immediately thereafter, so there wasn't much opportunity to do much about that after that.

"But why did she love Hayton? Why did she want to [2019] marry Hayton? Was it because of a great womanly love for this fine man or was it for what she thought this man could do for her?

"Remember at the time this started she's married to Dr. Miller, she has got three kids, Mr. Hayton is married to a very fine woman, they have four kids.

"She saw in Mr. Hayton a successful attorney, a good attorney, a moneymaking attorney, a young man on the way up, already doing fine and with tremendous prospects for doing better, a man who was active socially. He wasn't just a member of the church and active in that sense, he was organizationally-speaking active. I believe there was some comment about his being active politically, things of this sort. This is what she wanted. It was what Mr. Hayton could do for her, not what she could do for him that interested her.

"A manipulator of people. What did she do in that regard? She was one of Mrs. Hayton's best friends,

a frequenter of the home. All the time she's going to the motel she told you about, she's sympathizing with Mrs. Hayton trying to help Mrs. Hayton work out her problems and undoubtedly trying to encourage her to throw that terrible Hayton over and get a divorce so that she could marry him.

"Talk about your duplicity. In that conversation with Mr. Sprengel that was tape recorded, that was about 45 minutes, and you listen to that tape from beginning to [2020] end and what is it actually from beginning to end? She starts out, 'You want to hear a letter I got today?" And she talks about this letter she got from Hayton where Hayton says, 'Take your business elsewhere,' and the whole conversation really is, 'If I could just talk to him, if I could just get back together with him; he's just afraid to talk to me, he's afraid that he'll give in if he talks to me.'

"Remember this was on the 31st, the day after she had had those night telephone calls, she and Sandy, where she called him at his home and at first was real sweet and nice, she had to see him, and ended up threatening him if he didn't see her that night, she was going to do all sorts of terrible things, and the next thing is when Hayton speeded up his trip to New York and got his kids out of town, was gone for the whole month of August. [2021]

"Now, she indicated that she did not love her husband; that she had been rejected by him for some 14 years. She indicated a love affair with Mr. Hayton. Behind that we cannot go and we must not consider, but at least [2023] she—Mr. Hayton testified that Hayton started getting chummy with her; he had known her for years, had been close friends of the family's,

started getting personally friendly with her when she called him over to the house to discuss divorce as an attorney friend; that's what led to their getting together privately. So you see Hayton wasn't the cause of their not getting along. Hayton was just another symptom of her wanting to get something better than her husband, get somebody who could do more for her than her husband.

"This Hayton affair and the manner in which she handled it is rather interesting as indicative of the mental atmosphere of this woman that would lead her to a thing like murder.

"She started talking to Hayton because she wanted to divorce her husband, some talk, he said, about the financial problems involved in divorce, 'How much alimony can I get?" Things of this sort. They went to motels, according to her testimony—incidentally, this is all stuff put on by the defense about the intimacy between these two—one thing led to another, but it is pretty clear what she wanted. She wanted to be Hayton's wife right from the start. She wanted a divorce from her husband, be rid of her husband so she could have a better situation. [2024]

The more she saw Hayton, the more she's around him, the more she realizes that this is the type of man that she would like to be tied to. 'Here is the type of man that socially and financially and every way can take me closer to where I want to go than can Dr. Miller.'

"We get up to the point, though, where apparently she has been a very close friend of Mrs. Hayton but Mrs. Hayton apparently isn't divorcing Mr. Hayton. She has a meeting with Mr. Hayton around the 20th

of April, I believe, 1964, luncheon meeting. She calls him and says, 'Let's get together for lunch.' They do down here at the Holiday Inn, I believe she said or he said, and at that luncheon she again brought up the question, 'Look, now, let's be realistic. Mrs. Hayton isn't the one for you. I am. You know you'll never be happy with Mrs. Hayton.' This incident is uncontradicted. Hayton told you what was said but she took the stand and didn't deny one word. She told Mr. Hayton, 'Look, I'm going to divorce Cork. I've made up my mind I'm going to divorce Cork. You divorce your wife and we can get married.' And Hayton indicated that he [2025] would not.

"I hope you understand in the course of this trial we are not here to either excuse or blame Mr. Hayton for his conduct. Obviously a married man should not be running around with another woman whether or not the other woman is married. That's not our purpose. We are here to determine whether Mrs. Miller killed her husband. But in order to understand this, you have to know a little bit about what goes on in her mind.

"Hayton tells her—this is uncontradicted—'Look, under no circumstances do I intend to divorce my wife.' He told her, 'I love my wife. I'm satisfied with my wife. She's a good mother for the children. We have had many years of marriage and I don't intend to bust it up and I don't intend to divorce her.' And he told about the conversation, got a little hot but it ended up that way, that he was not going to leave his wife.

"The testimony is that the following Friday, that while Mr. Hayton and his boy and some other boys were over at Catalina, that Mrs. Hayton died and that Mr. Hayton returned when he was notified by the

Coast Guard, Red Cross or somebody, he returned and Mrs. Miller met him at the airport, Tri-City Airport, and Mr. Hayton told about how very helpful Mrs. Miller was. She immediately—well, she was with him for some time that day consoling him in his loss, then took some of the children home with her, [2026] then she alternated, running back and forth between the two houses swapping kids, taking care of his place and the kids. When the funeral came along, she brought the kids and they were all at the funeral. She was about as indispensable as you can get. For Mr. Hayton's sake or for Mrs. Miller's sake?

"I think it's pretty clear from everything that happens all the way through here you have got a manipulator in Mrs. Miller, a user. She knows that Hayton is upset and distraught at this time. She knows that he is at least fond of her if not loving her. If he is to marry her, this is a good time to work on him.

"They are together so much that in about a month, along around the end of May, I believe, the minister from the Seventh Day Adventists Church calls Mr. Hayton and asks if he can come and talk to him. 'Sure, come on over' He comes over and he tells Hayton, 'Look, there is some pretty nasty gossip going around the community about you and Mrs. Miller. Now, I don't know if there is anything to it but at least I want to alert you to the fact so that you can avoid doing anything which would tend to feed these rumors.' A polite way of saying, you know, knock it off. So Mr. Hayton, concerned with these rumors—after all, he has children, including a fourteen or fifteen year old girl—fifteen year old boy and a thirteen, fourteen year old girl, old enough to know what's going on, so Mr. Hay-

ton said that [2027] Hayton's business. It probably would have been smarter to say, 'No; get another lawyer.' But this looked like possibly a good case.

"He said, 'Look, I'll send my investigator out to look into it. If it's a good case, I'll take care of it.'

"He did send his investigator out. His investigator came back and gave Hayton the information that it looked like it would be a good case, then Hayton went out to her home. By this time she had returned from the hospital. She is banged up. And there are several other people in the house.

"Hayton took his boy with him when he went over there so there would be no gossip. He went over and in the house he talked to Mrs. Miller. He said they talked about the accident but also she again asked him 'Look, things have died down a little bit now. Can't we see each other again?' And he told her—remember this is all uncontradicted. He told her, 'No; strictly business from now on out. No more of this stuff.'

"Okay. So she bided her time. There may have been one or two other contacts. I don't recall. He indicated there were two or three along in here in which she indicated, 'Let's get together,' and he said, 'Nothing doing.'

"Then on June 22nd he indicated that she called [2029] and arranged for a luncheon meeting with I believe Mr. and Mrs. Sprengel and Mrs. Miller and some other person. They were going to have lunch with Mr. Hayton, lunch or dinner. I forget which. Dinner, I guess. And they did.

"And I'm not exactly sure how it worked out but she ended up and she is there with Hayton to take her home and they drove around quite a while and Mr.

Hayton admitted that they ended up in the motel in Riverside.

"This gives a little credence to what Mrs. Miller told Mr. Sprengel in that recorded phone conversation about 'He's afraid to see me for fear he'll weaken' and also indicates how Mrs. Miller was using sex to try to get to keep Mr. Hayton and ultimately marry him.

"So she admitted on the stand she still wanted to marry him at that time. She said she wanted to marry him up until the time of the boat incident.

"It was right after that apparently that the boat incident occurred, apparently right after that that the boat incident occurred.

"You begin to get a little insight as you go through these various things in Mrs. Miller's thinking and realize that this woman is capable of anything.

"This is what she told Mr. Hayton on July 30th when she telephoned him at his home, she'd ruin him. and she meant it.

"And remember Sandy Slagle called back and said, [2030]

place and went back to his house, and when he got there, there is Mrs. Miller waiting in front.

"Remember Hayton said that he locked the doors hoping that she wouldn't get in the car, figuring she wouldn't climb in, and she came over to the door and tried the door, and he said she used some profanity. He didn't say what it was. 'You so-and-so, you'd better open this door. I want to talk to you.'

"He told her, 'Shhh, I have neighbors.'

"It's 2:00 or 3:00 o'clock in the morning by this time, so to keep from really having a scene out there, he opened the door and she got in.

"And you remember how she read him out and she told him, 'Look here, sonny boy,' words to the effect, 'No man yet has ever turned me down or said no to me,' something to this effect, 'and you are not about to be the first.'

"Hayton said he told her, 'Are you out of your mind? What kind of action is this? What kind of talk is this? Get out before I throw you out.'

"And they sparked at each other for a little while there and she got out and left and he went on in the house.

"None of that is denied and this has been testified to under oath. The only part that's denied, really, is Sandy, who didn't get out of the Volkswagen, and Sandy's testimony is interesting in a lot of respects, but Sandy [2033] she tried to call Sprengel. On that day he then went—I believe it was that day at the office that he told his secretary to write a letter to Mrs. Miller telling her that he would no longer represent her on this automobile accident and suggesting that she take her case to another attorney at once, and the secretary indicated that she wrote that letter. I believe it's in evidence. I believe Mrs. Miller brought it in. It's in evidence.

"Then the next day Mrs. Miller called Sprengel and eventually Sprengel called her back and she talked to him, and that's the tape-recorded one. The tape-recorded one is in evidence, and also a transcription of it is in evidence, so in case you need to read it in the jury room, you can.

"And that's an interesting conversation because she is trying so carefully—she knows that Sprengel is a partner of Hayton's and sees him all the time, and

she is trying so carefully to maneuver through Sprengel to get Hayton to come and talk to her.

'I don't want to in effect make love any more. I've reconciled with my husband. I'm back with my husband. I just want to be friends.'

"But for 45 minutes she is talking about how essential it is that she get to talk to this man, that she get to be friends with him. She mentions the fact that he is afraid that he'll weaken if he sees her again, [2038] and she was pretty sure that he would if she could see him again. [2039]

"What did she testified to? And her testimony was very carefully limited to this and efforts to go beyond it were stopped.

"Her testimony was just to this one time she is there at the house and she sees them all seated together. This is the memory she's carrying of her son. And she testified to Dr. Miller's telling her that Mrs. Miller felt if they had another child, it might bring them closer together. This was at a time when, according to Mrs. Miller's testimony, she is in love with Hayton and not loving her husband. [2040]

situation. You remember the night of the boat incident she really raised cain with him and he indicated, Mr. Hayton indicated that that did it as far as he was concerned. It becomes apparent from this point on that he is literally afraid of her.

"On the night of the 30th of July, she calls him at home with a lot of threats and she gets no place. She demands to see him or else she's going to ruin him, and for a man who is as prominent in the community and legal profession and his church as Hayton

was, and who has this clandestine love affair going on, this is quite a threat.

"But Hayton would have nothing to do with her. He's afraid of her at this point. And the next day then, since she was not able to get through to Hayton to get to talk to him to try to talk him ino something, what does she do? She talks to his business partner.

"If you want to get word to a man you can't talk to, you talk to somebody that you know darn well is going to tell him what you said.

"She spends about 45 minutes talking to him, and let's see some of the things she says along the blackmail line.

"She tells Sprengel about the tape recording that she supposedly made back in February or March, a long time before any trouble developed between them, and let's see what she says about that. She is talking to Sprengel on [2058] the phone.

"She says, 'One time about March, the end of February or March—I just—I don't know—I just was real suspicious of the whole thing and I thought I noticed Art had two sides to him—' And get this, now—'and if he ever decided to be a bastard and turn on me and say, "I never said anything," you know, and try to get out of it—' Get out of what? She's a married woman. He's a married man. Way back then obviously she's working her web around for the purpose of ultimately either willingly or forcibly marrying this guy.

"'If he ever tried to get out of it. So I have a friend who runs a very big photography place, you know, tapes and everything—' And she tells then about putting the tape recorder under the seat in the

Cadillac and picking up this long conversation which she more or less relates, and she ends up by saying, 'I just thought just in case, you know, he ever pulls this—' This is back in February or March, and she is saying this to his partner, obviously realizing that it will be repeated to Hayton. She wants to talk to Hayton. The night before she tried to force him to talk to her and he wouldn't do it. Now, through his partner, she is indicating again, 'Either talk to me or I'm going to ruin you.'

"What else along the same line? In the same phone conversation I believe she mentions having motel [2059] receipts from when they had gone out.

"It's kind of hard for me to imagine a woman, married woman going out with a married man to motels and saving motel receipts to use against him unless you have in mind that you are going to get this guy one way or the other, for blackmail purposes.

"She tells Sprengel, 'I've got him coming and going.' Now, that's sort of a threat, then cajoling, she says, 'If he would just talk to me.' Then she says, 'I could get that little boy coming and going and he hasn't got a thing on me he can prove.' Threatening again.

"She really seems to think that rather than suffer the exposure and embarrassment and to some extent disgrace that this would and has brought upon him, that he would marry her.

"Then she goes on and she threatens him a little indirectly by talking about Cork, and she makes it clear that Cork has known about this Hayton love affair for a long time. She mentions the fact that she showed this letter she got from Hayton calling off the business arrangement to Cork and Cork indicated, 'Good, I'm

glad it's ending that way,' and she goes on to say that Cork had said that if he wasn't a Christian, he would kill Hayton, obviously indicating that Cork had been told about the Hayton affair. Obviously she had been throwing that in his face. [2060]

"I guess Sprengel indicated he didn't think Cork would really kill him. She's indicating, 'No, but he would go over there and beat him up, take him apart.'

"She says, 'I've spent an awful lot of time keeping Cork under control and did a beautiful job on it, but I'm not going to work too hard at it any more.'

"Again we have a manipulator, somebody who is using one person against the other.

"Now, Sprengel is Hayton's business partner. She cultivated Sprengel. Mrs. Sprengel didn't really get to know her until about spring of 1964. So she cultivated Mrs. Sprengel, and, now, the 30th of July, she makes the last effort directly with Hayton by calling him at home at night to get to talk to him and Hayton cuts her off.

"The next day she has this long conversation with Mr. Sprengel and the next day Hayton leaves town. He's gone two weeks to New York, then he's back and he's out of town in Southern California vacationing for another couple of weeks.

"Mrs. Sprengel testified that in late August—this is after Hayton is back from the East but not staying at home—Mrs. Miller telephoned Mrs. Sprengel and indicated that she was still holding a trump card against Hayton.

"Now, she says that she lost all interest in marrying Hayton as of the night of the boat incident, [2061] although she admits that she continues to love him up until the time of her arrest, up until her husband's

death, which is about the same, and yet in late August she is saying she is still holding the trump card against Hayton, and the only reason of holding a trump card is a blackmail threat that 'Either you marry me or else,' and she told Mrs. Sprengel in that conversation yes, she still loved Hayton.

"She's a woman and she's got to save face a little bit.

"In that conversation, that same conversation she says, 'Of course I wouldn't marry him any more but I still love him.' But she's passing the word hoping that it will get to Hayton and hoping that Hayton will see the light and come around.

"On September 22nd, in Mrs. Sprengel's home, Mrs. Miller phones first, says, 'I want to come over and show you a letter,' she then comes over to the house and that's when she shows a letter which is apparently supposed to affect Mr. Hayton, and she indicates that she—she admits this isn't the original letter. She is supposed to have copied the original letter.

"But she says that she was planning to have photo copies made of this letter and distribute them to the right people around the county, including Mr. Hayton.

"Again a blackmail threat. [2062]

"Then, of course, when you are blackmailing, you have to have something that you are trying to get them to do, and if you don't, then you'll do these terrible things to them.

"What she says to Mrs. Sprengel, then, she says, 'Of course, if I had married Mr. Hayton, I would have destroyed this letter.' She hasn't distributed it yet but there is the clear implication that she is going to, and if Hayon wants to come around and make some proposition, she'll accept it.

"Incidentally, on September 15th Mrs. Sprengel said that Mrs. Miller told her that Dr. Miller had threatened suicide by driving his car off a cliff. The only other indication that I recall in the evidence of suicide talk—may have been more but one that sticks in my mind is when he was staying at the Habekosts during the separation and he was feeling real low and one time while having dinner some place he said, 'Might as well go out and end it all,' blow out his brains, something to that effect.

"Now, September 15th is after the reconciliation when Mrs. Miller is pretending to be—is lovey-dovey with her husband. It's right about that time shortly after that his folks come down and she's putting on the show of solidarity with Dr. Miller, let [*sic*] she's laying the groundwork for Dr. Miller's death, talking about suicide, and it is after that, on September 22nd, when she is [2063] supposed to be indicating how close she is with her husband, she's talking about this threat against Hayton, about still loving him. If he would have married her, she would have thrown away this letter.

"How about that separation? The divorce was filed July 8th. Of course, it had been in the lawyer's office some time before that. She had actually signed it a few days earlier than that. They were living apart. She is doing her best to make herself available to marry someone else, and she reconciled with him. Why? Not because she loved him. There is plenty of evidence all the way through here that any love was dead.

"Sprengel said she told him that she had lost any affection whatsoever for her husband. After the reconciliation Sprengel talked to her and she told Sprengel, in

explaining the reconciliation, twenty-five thousand a year is better than nothing.

"You see, during this separation it became apparent to her that it was going to take a little time to get Hayton back, and if she couldn't get Hayton, she was going to have to get somebody else to support her, and you can't divorce a $25,000-a-year income without something to substitute for it.

"Let's take a look at the insurance. The same day that her husband burned to death, Mrs. Miller was talking to Detective Paterson, and you heard the tape recording. [2064] There were two or three places in that tape recording which lasted about an hour where she giggled. One place where there is a rather humorous comment. Not a woman in a state of great shock, having lost her beloved husband.

"And he asked her about insurance, Paterson did. Yes, she said, she knew the names of the companies. There is a $50,000 policy, and she named the company. There is a $20,000 policy, and she named the company.

"Then she said, 'There is some more through the dental association.' She didn't know how much. I think she said small policies.

"You heard Harold Lance testify there were more policies than that. But let's take what she stated to Paterson the day her husband died that she knew about.

"She told Paterson there was a $50,000.00 policy with one company and $20,000.00 policy with another company, and Paterson said, 'Any of them double indemnity?' She says, 'Yes, the $20,000.00 policy definitely is,' and she thinks the $50,000.00 policy is.

"Now, when you are talking about why somebody killed somebody for financial gain, you are talking about

what is going on inside their thinking box, and she knew that the twenty thousand was double indemnity, and it was, as it turned out. She though the $50,000.00 policy was double indemnity. It wasn't, it turned out. But according to what she thought at that point, assuming an [2065] accidental death, there is fifty thousand with double indemnity, which is a hundred thousand, twenty thousand double, which is forty thousand. That's $140,000.00, assuming accidental death, plus some other smaller stuff which she doesn't know the details of.

"She can't divorce her husband because financially she can't afford it. Remember she had discussed with Mr. Hayton some time before the financial problems involved in divorce, and I think it doesn't take any great mathematical genius to know that a man whose income will not stretch to meet the expenses of a together household, it's going to be a whale of a lot more difficult if it's a separated house and you have to divide it up between two homes. I think that's common knowledge.

"Now, if Dr. Miller dies accidentally and she comes by at least a hundred and forty thousand dollars, this ought to tide her over. Maybe with Dr. Miller gone there will no longer be the gossip about Hayton going on with a married woman. He would be then legitimately able to go around with her.

"I think it's pretty clear that she didn't really conceive that anybody would not want to go around with her. Remember she told Sprengel that the real reason Hayton wouldn't see her was because he was afraid he'd weaken if he did see her. If she is a really free widow, perhaps he would come around, and $140,000.00

would give her a little [2066] time to work on him. If he didn't come around, there would be others. She has the example of this friend of hers, the dentist who was killed in an automobile accident and this friend got the insurance and married a doctor fairly soon thereafter.

"At any rate, when you consider that she knew the twenty thousand was double indemnity and she thought the fifty thousand was double, that's $70,000.00 extra in the event of accidental death, $70,000.00 that she would not get if Dr. Miller died in bed from an overdose of barbituates [sic].

"Well, the idea I'm sure did not spring full grown into her thinking. This is something that you think about and formulate and try to figure out how you can make it look for sure like an accident.

"She testified that she was familiar with Banyan Street; that she drove along Banyon Street many, many times. She told the CHP officer that she used it frequently and she was over it the day before.

"Remember Paterson in that tape that he took, he said, 'Well, that turn from Sapphire onto Banyon is kind of a sharp turn,' and she says, 'Well, maybe for you but not for me. I'm used to it.' She says, 'I go there all the time.' [2067]

they sat and drank hot chocolate and watched television; that was the first night, he said, that they had been out socially since his wife's death; but on cross-examination we found out that eight to ten nights before that, June 22nd, he was at Pitruzzello's with Lucille Miller, with Mr. and Mrs. Sprengel and with Dr. Grayson's daughter, and on June 22nd, that was the night that they went up then to the Caravan Inn.

Perhaps Mr. Hayton was not lying on direct examination. Perhaps he actually distinguishes between what is a social engagement and what is a sexual engagement.

"Let's examine that boat incident because it's really interesting. Mr. Turner wants you to think Lucille is a murderess, a vicious woman with a mean streak. That boat incident is a good example of where Mr. Turner is wrong. Every one of you have some time or other run into a jealous woman. You know what what they are like. Some time or other you have run into the scorn of a—the fury of woman that has been scorned. You know, hell hath no fury like that of a woman scorned, or words to that effect.

"So what do we have? We have Lucille Miller separated from her husband, about to divorce her husband, madly in love with Arthwell Hayton, and she must have gotten a trip some way because she follows him, she follows him down to the boat, the man that she's in love with.

"She sees him go out in that boat with another [2174]

"What effect did that boat incident have on her? Well, on page 13 of that tape to Sprengel she tells—she says, 'Well, his emotional entanglement with me is over as of when I went back with Cork, and in fact it was over as of the night of the boat.'

"Then the way she testified on the stand here again corroborates it. At page 1782 she was asked by Mr. Turner if she ever wanted to marry Arthwell, and she said yes, at one time she wanted to marry Arthwell.

"On page 1783 Mr. Turner asked her when she stopped wanting to marry Arthwell. She said she stopped wanting to marry him at the boat incident.

"You notice that she is talking about when she stopped wanting to marry him, not when she stopped feeling love in her heart for him. She had enough sense to know, [2176]

to you can you rely on Mr. Hayton? Is he a trustworthy and reliable witness? I want to ask you now how bad a girl was Lucille Miller for carrying on this affair with Arthwell. As you know it was not a pickup at a bar deal. It was an affair that took many years to culminate. The parties knew each other seven or eight years. The families were close. Lucille was Auntie Lucy to the Hayton children, and during this period of time she felt rejected, she said, by her husband.

"I think many women would call Arthwell Hayton handsome. I know that he is suave. He is smooth-talking. He is successful. He comes along at a time when Lucille wants attention. He gives it to her. An affair ultimately develops.

"I don't condone adultery, neither should you, but before we condemn the adultery, maybe we ought to do some soulsearching.

"Every week your own clergymen hear confessions of adultery. Every day or every week you own doctor hears confessions of adultery. Every week we as attorneys hear confessions of adultery and love affairs. Now, these things happen to the best of people. They start innocently.

"You take the average boss and secretary romance, how does it begin? With a coffee break, perhaps, then maybe luncheon, then it develops into the cocktails and before they know it an affair. If you asked that boss or [2181] that secretary when they began with a coffee break that this is going to end in an af-

fair, no, they'd say, they wouldn't believe it, but it does happen.

"So I don't condemn Arthwell Hayton for his part in this affair any more than I condemn Lucille Miller for her part, but I do condemn Arthwell for painting the distorted picture of it on the witness stand.

"How actually did Lucille feel about Arthwell at the time her husband died? We know that she said on the stand that at one time she wanted to marry Arthwell. She said that this desire ended at the boat incident, and straight from the shoulders she told you that she was in love with Arthwell Hayton up to the moment Cork was gone. That was not an easy confession to make, not to the whole world, not to the jury when her very life is at stake. You have got to admit that Lucille Miller is not a liar, not when she'll make an admission like that on the stand.

"Now, was she telling the truth about her desire to marry Arthwell ending at the boat incident and her love ending when Cork died?

"Well, if we look to the statements that she made before this trial, I think that you'll find there the corroboration for her testimony at the trial. On that tape with Mr. Sprengel when she tells about the boat incident, she said, 'I did that on purpose to save myself from letting my heart do something crazy.' [2182]

"Then about two weeks before her husband died she was talking to Mrs. Sprengel and she admitted to Mrs. Sprengel her love for Arthwell Hayton. But she also said, 'I would never marry him because he's no good.'

"Then Mr. Paterson, when he questioned her on tape on the night she was arrested, he asked her, 'How do

you feel about Mr. Hayton now?' And her answer was, 'Now? Bah.'

"So although Mr. Turner says that she wanted to kill her husband to marry Arthwell Hayton, there is absolutely no proof at this trial that she wanted to marry Arthwell after that boat incident. All the proof that has been submitted to you is to the contrary; her desire to marry Arthwell ended with the boat incident.

"Now, keep something else in mind, too. When Lucille was questioned by Mr. Paterson on the night she was arrested, she leveled with him concerning Mr. Hayton. She leveled with him concerning her feelings toward her own husband. She didn't try to conceal anything from him.

"Then we get to the point, well, how did she actually feel towards her husband when he died or right before he died. Well, there is evidence to the effect that she felt she was not in love with her husband.

"There is, of course, no evidence to the effect that she despised him or that she detested him or hated him. There is no evidence of any kind to that effect. [2183] The closest you come to it is at page 910 of the transcript where Mr. Sprengel claims that she once made a statement that she had lost whatever affection she had for her husband, but Mr. Sprengel admitted, too, that she said her husband was man of high principles.

"Now, Peggy Fisk, she is the fink that they put up in the jail to spy on Lucille, she claims that Lucille made the statement that Lucille did not love her husband, but Peggy also admits that Lucille said she respected her husband.

"She told Paterson on tape that she felt rejected for 14 out of the 15 years, but she did not condemn

her husband for that. In fact to Paterson she made excuses for her husband. She said, 'He's not a cruel man; his parents were German; he was not brought up affectionate or demonstrative; he thought it was sissified to be affectionate at all.'

"So she made excuses for her husband instead of condemning him. She must have mentioned to Mr. Paterson that she didn't feel as though she loved her husband, so Paterson asked her on tape, he said, 'Did Harold know you didn't love your husband?' Lucille said, 'Maybe I shouldn't have said that. Love is a word. I certainly had something going for Cork.'

"Now, she was right, love is a word. You know that as well as I do. We know that people confuse romance [2184] with love. They confuse sex with love. They confuse emotional feelings with love. That's why as adults we often try to discourage these teenage marriages. We say to the young couple, 'You don't know what love is.' But by the same token people as old as Lucille Miller and like Lucille Miller often confuse their attraction for a person as love when in fact it might be something else.

"What is love? You know what it is. The big thing about love, it's a willingness to sacrifice, a willingness to share troubles as well as joy. You love your wife. You love your children. You loved your parents. You can love a number of people at the same time. But the love you have for your wife, you don't get the thrill you got when you were dating her every time you see her. No, you don't get the thrill, but the sacrifice you are willing to make for her, the sacrifices you are willing to make for your children; if that's the true definition of love, then I submit to you that Lucille Miller

loved her husband Cork more than she loved Arthwell Hayton.

"Look at Lucille when she and Cork were separated. She used to let him come home each night to visit the children. She used to fix a special meal for him each night, a special diet.

"Mr. Turner says the reason she did that was to keep him strong so he could to go work the next day and earn money, but doesn't prove that at all. No proof [2185]

"Mr. Turner made quite a bit of mention about insurance money and how Lucille wanted that insurance money, but first of all, though, earlier in his argument he had mentioned the fact that Dr. Miller was netting $25,000.00 a year or more. That's pretty good money. You bet it's pretty good money. Lucille didn't need that insurance money.

"But let's take a look, though, at the insurance policies themselves that we put into evidence. There was a Continental policy, $20,000.00. That has a double indemnity feature to it. She knew about that policy and that double indemnity feature. That policy, and it's in [2238] evidence, was taken out on December 8th, 1954. That's ten years. That policy had been in existence a long, long time, and if she was looking for insurance money, she waited some ten years to be able to take advantage of that policy.

"The $50,000.00 Prudential policy, that wasn't taken out last week or last month or the month before. That was taken out on Febuary 1st, 1961, over three years ago. The other little policy in evidence was taken out on March 1st, 1961. So these are not new policies that they just recently got that she is suddenly going to try to take advantage of.

"How well did she know about these policies? Actually they had more policies but these are the only ones that she had any knowledge of. When she was questioned by Paterson about the policies, she told him, yes, there is a Connecticut policy, twenty thousand, that's double indemnity. She said there is a Prudential policy for fifty thousand. She said, 'I think it's double. I don't know.' Then she goes on to say that the husband and the accountant took care of those things. Although she had knowledge of them, she had only a general knowledge of them.

"Mr. Turner mentioned the fact that when she was questioned by Mr. Paterson, you can hear on the tape how she giggled; that she was not remorseful; that she was humorous. Okay. If you believe that, ask that that tape be replayed to you. Listen to the tape. You'll find out [2239]
ahead, maybe you would have know the ledge was there, maybe you would not.

"Mr. Hogancamp didn't know if was there that first hour and a half he spent there because I asked him at page 99, and he said he did not become aware of that drop until the next day when he returned to the fire scene. So it's not something that sticks right out. So although she used Banyan Street quite a bit, there is actually no evidence at all that she knew the ledge was there.

"Now I'm going to go into a little subject which I have labeled sort of dirty pool, and I think there has been some of it in this case.

"I told you that Lucille was arrested at 1:50 in the afternoon, then they begin to question her around 9:00 o'clock at night. She has already had over 36

hours of very little sleep. She is exhausted. She is running on nerve alone.

"Mr. Paterson questions her from 9:00 until 10:15, then he brings her downstairs in the interrogation room. There is no matron there at all. There is a hidden mike deal, two-way mirrors, two officers in the other room. They question her for another hour. Then they are not satisfied. They have got nothing incriminating at all against her. So they sneak up Peggy Fisk to go into the jail and Peggy Fisk spent five days in that jail.

"She went up there the following night, October [2243] the 9th. And as Peggy said, nobody could sleep in that jail that night because of all the noise going on. That's an indication of what I mean. You get thrown in that jail and it can be a real traumatic experience. Apparently heck was being raised that night among the prisoners.

"Peggy pretended she was in there on a narcotics violation. She said she was sent to listen, not to talk to Lucille, but merely to listen to what Lucille said. Of course, she wasn't getting anywhere there, wasn't accomplishing anything. Then the vice squad gave her a newspaper clipping and told her to take it up and show it to Lucille.

"And as she took that from under her gown and showed it to Lucille, she pointed out to Lucille, 'Look at what the press is doing to you. They are ruining you.'

"Then Peggy tries to undermine Lucille's confidence in me because she began to tell her about the experience that she had with an attorney that didn't do her any good and 'maybe you ought to think it over.' That's hitting way, way below the belt when they use

such tactics to try to undermine a defendant's confidence in her attorney.

"Who else has Lucille Miller got to turn to except me? And if she has no confidence in me, then where in the world is that poor girl then? They try to undermine her confidence in me, then try to create a confidence in [2244] Sheriff Bland, and Peggy Fisk tells Lucille that Sheriff Bland 'has just given me a floater out of town. I put all my trust in Sheriff Bland. Why don't you do the same?" So they are trying to take her away from me, who is here to protect her, over to Mr. Bland, who is there to prosecute her.

"Now, that's hitting below the belt.

"Then they told her, 'We heard a couple of deputy district attorneys talking and they said Hayton just came in and blew the lid off the case.'

"Well, I don't know how many others they have had up there from October the 8th right up until this trial listening and to report on anything she said, but his [sic] much we know, no matter how many they have, they haven't got a single thing that's incriminating against Lucille Miller. They have absolutely no admission, no confession of any kind, and they'll never have because Lucille Miller is innocent. [2245]

"He says the prosecution's case is based entirely on surmise and conjecture. That's not true.

"Is it surmise and conjecture that Mrs. Miller had been dissatisfied with her husband for a long time?

"No. Fact.

"It is surmise and conjecture that Mrs. Miller had been infatuated with Hayton and wanted to marry him?

"There is disagreement as to when this wanting to marry him stopped, but there is no question at all that she wanted to marry him.

"Is it surmise and conjecture that at the time [2265] she was arrested, she had not only his business card but two placecards from happier days?

"Is it surmise and conjecture that she told the girl up in the jail she still loved Hayton and did not love her husband?

"Is it surmise and conjecture that she went out and got a gasoline can full of gasoline?

"Is it surmise and conjecture that the gasoline can was in this Volkswagen on this night with the lid off and that this car burned up apparently with this terrific heat?

"Is it surmise and conjecture there is no evidence of any damage to this car such as would result from any sort of a collision or scraping or anything else?

"It is just stopped.

"Is it surmise and conjecture that the car was in low gear, not in high gear, where it would be if she had been driving down the road?

"Fact.

"Is it surmise and conjecture that the parking lights were on, not the headlights, as would have been if she had been driving down the road and this thing happened accidentally?

"That's a fact.

"Is it surmise and conjecture that Dr. Miller had a load of barbiturates in his system?

"No. It's a fact. [2266]

anything except tell the truth, and Mrs. Miller did not deny anything that he said.

"He ends up by saying, 'Before you condemn adultery, do a little soul-searching.'

"Just remember who brought up the subject of adultery. Not me. I'm not trying it. I don't care, and the only reason I keep going over this is because Mr. Foley did and I feel I have to answer it and I have to set the record straight.

"I'm concerned with did Mrs. Miller murder her husband, not whether or not she is an adultress.

"Mr. Foley said that she is so terribly honest because she said that she loved Mr. Hayton to the moment of the victim's death, therefore this indicates she is not a liar

"How is she going to get on the stand and say anything else when we have got the various people to whom she has indicated just shortly before this that she loved Hayton? And, of course, right after her husband's death she is arrested and is in custody, and she tells the girl upstairs that she still loves Hayton.

"A couple of weeks before her husband's death she is telling Mrs. Sprengel that she still loves Mr. Hayton.

"I don't think that indicates any great honesty. I don't think it is true as a matter of fact, that she stopped loving Hayton the moment her husband died. What [2271] was there about that to cause her to stop loving him.

"He says she leveled with Mr. Paterson about Hayton, didn't try to conceal anything.

"Go back and read that thing again. She didn't tell him much about Hayton. She says—she indicated she had been going with him and she didn't care for him any more, but she didn't say she had just stopped loving him twelve hours before or however long it had been.

"He says that the defendant admitted she didn't love her husband Dr. Miller but that there was no evidence she despised or hated him, so there is no evidence that he deserved being despised or hated. It is just that she didn't want him and she found it apparently financially inconvenient to divorce him.

"She says, 'I certainly had something going for Cork,' what she told Paterson, not what she said here.

"Then we have the discourse on love by Mr. Foley which I have mentioned.

"Analyze for yourself Mrs. Miller's actions throughout this whole thing and see where she fits in this description that Mr. Foley gives of love, the feeling of desire to make sacrifices for someone else.

"If Dr. Miller had any emotional problems, if he had headaches, if he had ulcers, this sort of thing, where do you think he got them?

"Mr. Foley says that Mrs. Miller doesn't keep any [2272]

There may be lots of reasons. There may be reasons that we haven't even thought of, don't know anything about. There are a lot of things that could have entered in. May have something to do with the pregnancy. I don't know. But the only things that appear on the surface to be motives are: (a) insurance. She has tried divorcing him and apparently this isn't working out financially and she told Sprengel she got back together with him because $25,000.00 a year was better than nothing. Money. Just a desire to be rid of this guy. Put up with him as long as she is going to. We know that she has been going with Hayton and wanting to marry him. Maybe she still does. She says she doesn't, but her actions indicate that she still does. Maybe she feels that the only reason Hayton is against

her is because his minister said to him, 'Knock it off; you are creating a lot of gossip going with a married woman.' Maybe after she becomes a widow and things quiet down a little bit, then they would be back together again.

"I think it appears all the way through here that she is convinced that nobody would of his own free will reject her. It is quite apparent she did not want to be married to Cork. She did or very recently had wanted to be married to Hayton.

"The reason she wanted to be married to Hayton still exists. If she could get the insurance which, [2274] according to what she told Paterson, would be over a hundred and forty thousand, this could tide her over until things could be patched up with Hayton, and if they couldn't be patched up, there are other people that make a lot of money.

"Her friend whose husband died in Pomona married a doctor.

"He says that with her husband making $25,000.00 a year, she didn't need the insurance.

"Just look at the evidence. For gosh sakes, $25,000.00 a year and she is having to borrow money from friends, forge her husband's name to applications for loans, notes. [2275]